December, 1977

Consultation Paper on Short Term Legislative Amendments

Ontario
Ministry of Community and Social Services
Children's Services Division

Submissions regarding this paper may be made by writing to:

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1. Introduction

The Children's Services Division, as part of the Ministry of Community and Social Services, assumed governmental responsibility for a number of children's services on July 1st, 1977. This constituted a first step in a process designed to integrate and coordinate services to children and families across the Province of Ontario. The original policy papers and newsletters outlining the progress of the Division to date may be obtained from the Communications Branch of the Ministry of Community and Social Services.

A first priority has been to examine the legislation administered by the Children's Services Division. There were two objectives in doing so:

(a) First, the Minister of Community and Social Services, when announcing an implementation plan on June 30th, 1977, endorsed the move to establish children's services bodies and also recommended a stage-by-stage approach to the issue. At the same time he made a commitment to resolve those program and policy issues which needed to be faced during the interim period before children's services bodies were in place. The Division is in the process of developing program priorities which are consistent with the principles outlined in its second newsletter. A number of identified matters of concern relating to children and families have an effect upon the law and are thought to require legislative reform. The proposals in this package attempt to provide that legal response. It is our feeling that the suggested changes are all consistent with the long-term objectives of the Division and represent a commitment to deal with needs and issues identified during the early months of the Division's existence.

(b) Secondly, a number of changes are necessary to enable the Division to implement the standards and funding approaches it is presently developing. Work is underway in both of these areas and a paper outlining both short-term and long-term standards development will be available for consultation early in 1978. It is important to be able to implement these standards as they are completed, recognizing that both the creation of the standards and the work necessary to comply with them will be a gradual but steady process. Thus we are suggesting for example that one Act be altered to form the framework of a single residential services statute which will contain all of the standards required for licensing purposes. As well, the funding approaches will require extensive alteration over the next while, both to eliminate inappropriate financial incentives and disincentives and to introduce appropriate methods of cost-sharing. Such alterations in funding will need to be introduced gradually in accordance with proposals released for consultation by the Division, with

the ultimate resolution of the issue being expressed in omnibus legislation which will bring all of the relevant laws together in one Act.

The proposals have been put together with the assistance of the various program branches of the Division, with the continuing advice of a Task Force on Legislation and an outside group of interested lawyers, and with the aid of an Interministerial Committee on Child Abuse and a Legislative Task Force on Child Abuse (a list of members is attached as an appendix to these proposals). The child abuse committees began meeting before the Division came into existence.

The Acts which we propose amending are:

The Child Welfare Act
The Children's Boarding Homes Act
The Children's Institutions Act
The Provincial Courts Act
The Training Schools Act
The Day Nurseries Act
The Children's Mental Health Centres Act

A summary of recommendations is included at the back of this package of materials.

It should be stressed again that we see these proposals as a first step in a process of law reform which will produce one rational set of laws relating to services for children and families. Much of the work being done now relates to the areas of standards, information systems and program change, work which must precede and complement law reform on the broadest scale if the goals of the reorganization are to be accomplished. A number of other papers will be released during the time we are consulting on these proposals and they will indicate how we hope to build upon the foundation established by the reforms suggested in this document.

We are hoping to receive extensive feedback from those who read and study this paper. We wish to emphasize that the recommendations put forward represent by no means our final position. They are our present thoughts on various issues and we are eager for input to help us revise our thinking and finally formulate a meaningful and sensitive set of proposals. The Task Force on Legislation will continue to meet and the community liaison groups established across the Province will be seeking opinion and comment.

As stated, a number of other papers are being prepared for release for consultation. The fact that the small number of senior personnel within the Division will need to spend substantial time personally discussing with interested people the papers to be released on children's services bodies and program priorities means that feedback on these short-term law proposals must be channelled almost totally through the Community Liaison Branch.

We would ask that submissions be made in writing to:

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and that we receive them within the next two months. Should you have any questions concerning the paper itself, please do not hesitate to call Mr. Doug Rutherford or Miss Andrea Walker of our Legal Services Branch at 965-5147.

It is our hope to be able to develop legislation in the areas under discussion soon after the consultation period is ended.

2. The Child Welfare Act

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2. The Child Welfare Act

1. Introduction

We have examined The Child Welfare Act with some immediate goals in mind. While long-range policy is still being developed by the Children's Services Division, we believe that it is important to support and improve the existing vehicles for delivering child welfare services. The children's aid societies remain the important front line of those services and many of these proposed amendments arise from their suggestions over the past three years. At the same time, we have avoided changes in the legislation which could interfere with the long-range goal of providing local delivery of children's services.

Some of the proposed amendments have a direct bearing on the length of time children are in care. We have attempted to reduce uncertainty for the child by encouraging earlier decisions to return a child to the family or to make permanent plans for alternate placement. Where adoption is contemplated, we have sought to reduce uncertainty for the adoptive parents at an earlier stage. Where Crown wardship is in effect, we are recommending a review of societies' caseloads and the possible return of the child to his or her home if no permanent placement has been made after two years.

Time periods have also been a concern in the recommendations regarding the budget process. We are making changes that will speed up the submission and approval of final budgets from the children's aid societies. In this area, the Ministry recognizes a need to get earlier feedback to the societies.

Child abuse has received special attention because of new research knowledge and the need to emphasize the responsibilities of professionals working with children. A recent Toronto case has also helped to focus the ongoing work of the Division through the recommendations of a coroner's jury.

Hearings in child protection cases are quite often the centre of attention for lawyers and child care workers. There are a number of procedures and safeguards which should be included in these hearings. Some of these are technical matters, but other requirements will ensure that a judge examines the work which has been done in the child's home before any placement of the child is ordered. Another measure, recommended to us by the Attorney-General, would see that some children would be represented by their own separate lawyers in child protection hearings. This

legislative change will allow pilot projects to proceed in a study of effective legal representation of children.

Furthermore, we think that, although protection hearings are normally confidential and closed, the public has a right to further education about the legal processes surrounding child protection. We have proposed that the media be able to gain admission to the courts for these hearings and to report on the judicial process, provided that no identifying information is later published. This procedure now works adequately in some juvenile courts and we think it could be successful in child welfare matters.

Most of our proposals on adoption concern the regulation of private adoptions. While we were unwilling to recommend a total ban on private placement adoptions, there have been enough serious problems in this area that we are prepared to recommend government licensing of those who engage in private placement adoptions. This will allow some control over the quality of adoption services without requiring the full scrutiny and counselling that accompanies a children's aid society placement. Step-parent and some relative adoptions, which constitute a substantial percentage of all adoptions, would be exempt from the licensing scheme.

2. The Budget Process

a. Regional Government Definition

Because regional governments are very much involved in the approval of children's aid society budgets, that involvement should be more clearly recognized by the Act. Furthermore, the various municipal bodies should be referred to in their corporate status in order to describe more accurately their legal responsibilities under the Act.

1. RECOMMENDATION: The definition of a "municipality" should be amended to more clearly recognize a "regional government" and to refer to all municipalities as corporate bodies. (Draft Act, s.1)

b. Budget Deadlines

The Child Welfare Act now provides for a series of steps that must be taken before a children's aid society budget is approved. Because municipalities pay a 20% share of agency budgets, their approval is sought in the budget process. Where the municipality does not agree with a society estimate or the Ministry's suggested estimates, a child welfare review board can be set up to recommend a final figure. Likewise, a children's aid society can call for a child welfare review board when they disagree with the Ministry's suggested estimates.

We do not wish to remove any step in the process because a fair hearing is essential for all parties. However, all three parties--the societies, the municipalities and the Ministry--have delayed necessary approvals beyond reason in the past few years. For example, the Ministry cannot begin to divide its own allocation until most society estimates are received. Last year, only a small percentage of these estimates were submitted before the late February deadline. In other cases, municipalities go beyond the 60 days allowed by statute before they approve a society estimate. The Ministry has also been late in returning final approvals to the societies. We think that a number of changes are called for.

2. RECOMMENDATION: Where a children's aid society does not submit its budget estimates before the deadline established by the Director of Child Welfare, the Minister should be able to establish an amount and treat that amount as the estimate submitted to the Minister. The society should retain the right to call for a child welfare review board. (Draft Act, s. 2)

3. RECOMMENDATION: Where a municipality has not approved a society budget estimate within the 60 days allowed by the Act, that estimate should be deemed an approved estimate for the continuing budget process. The municipality should retain the right to call for a child welfare review board, but it must choose to do so before the 60 days have expired. (Draft Act, s. 2)

With these changes, Ministry officials will be able to streamline the budget process and begin negotiations with societies at an early date. The Ministry has committed itself to a more expeditious final approval of budgets in future years.

3. Non-Ward Care

This type of child care was formally authorized by the 1975 amendments to The Child Welfare Act. It allows a child to be cared for by a society on the basis of an agreement with the parents, rather than a court order for wardship. This form of care has grown to the point where an average of 1300 children have been in non-ward care at any given time in 1977. However, there are some clarifications and improvements that are necessary if non-ward care is to fulfil its original purposes.

First, we think that two separate sections of the Act should be created to distinguish two types of care:

(i) "care by agreement" for temporary circumstances, and
(ii) a "special needs agreement" for medium and long-term care for children who have special needs due to physical, mental or emotional handicaps.

"Care by agreement", which is the predominant form of our present non-ward care, is normally used in short-term emergency situations. The child is taken into care without a court process because there is a good working relationship to continue between the society and the parents without the intervention of the adversary system. "Care by agreement" should reflect the major purpose of non-ward care--to work with the family toward an early reunification with the child without a court order which unnecessarily restricts or suspends the authority and position of the parents. Entry into care should be governed by the same reasons that would lead a society to apprehend a child. At the same time, the rights of parents should be protected. With these aims, and keeping in mind that the parents have never had a day in court, we believe that "care by agreement" should be time-limited and reviewable.

4. RECOMMENDATION: Non-ward care should be renamed "care by agreement" and should be limited to an initial agreement of up to six months. The agreement should be reviewed by the Director of Child Welfare and extended for a further period if temporary care is still required that together with the initial period, would not exceed 12 months. (Draft Act, s. 9 (1))

We recognize that this reduces the maximum possible period from 24 months to 12 months. However, we think that a majority of these agreements can lead to a decision on the child's future within that time period. If continued care will be needed, a court hearing for society wardship or Crown wardship should be commenced. During "care by agreement", the parents should continue to have their right to terminate the agreement upon 15 days' notice. The fact that few parents exercise this right confirms our belief that automatic review by the Director, at an early stage, is a necessary feature of "care by agreement".

For the administration of these reviews, the Division will be working out the best methods for handling the expected volume of cases. In some cases, the Director of Child Welfare will review the agreements. In other situations, he may delegate the review function to a local Director of a children's aid society. Reviews would always be conducted in light of the guidelines issued by the Director of Child Welfare, which would indicate the circumstances warranting an extension of the agreement.

Recent research evidence shows that longer periods of "temporary" care for children lead to a greater number of children coming into care permanently. The Child Welfare Act, with the advent of legislated non-ward care in 1975, allows a maximum period of up to four years of "temporary" child care (24 months in non-ward care plus 24 months in society wardship). Of course, the majority of cases do not extend the period of uncertainty over the full four years. However, some cases do cause concern for the child's welfare. We have suggested the step of reducing "care by agreement" to one year. But, in addition, we believe that the original aims of society wardship should be met keeping uninterrupted temporary care confined to a maximum of two years. Therefore, it should be possible to combine successive periods of "care by agreement" and society wardship; but a blend of the two could be permitted only if the total uninterrrupted time in temporary care does not exceed two years.

5. RECOMMENDATION: Any uninterrrupted period during which a child is subject to care by agreement should be subtracted from the total period that the child can be kept in care under society wardship. (Draft Act, s.16)

In the preparation and signing of a document for "care by agreement", the needs of the older child should be considered more carefully. The guidelines of the Director of Child Welfare for non-ward care now suggest that older children should be able to consent to the agreement. We believe

that this practice should be confirmed in legislation. Consistent with this recommendation, there should be a right for the child to terminate an agreement. Like the parents, if the child can consent, he or she should be able to withdraw consent. This may lead to more frequent termination of agreements in circumstances that endanger the child. It should be remembered, however, that the society can always bring the matter to the court to decide whether the child is in need of protection. On balance, we believe that the child, who is 12 years of age or over, should have the right to terminate the agreement. In choosing the age of 12, we are endeavouring to be consistent with the age of criminal responsibility which has been endorsed by the Province and is set out in the proposed new federal Young Offender's Act.

6. RECOMMENDATION: The consent of a child aged 12 or over should be required as part of an agreement for his or her temporary care. The child should also have the right to terminate "care by agreement" after giving 15 days' notice to the society. (Draft Act, s.9 (1) (2))

Under the present law, a child aged 16 and over cannot be apprehended and made a ward of the society or the Crown. As a result, services can only be extended to a young person if he or she was taken into care while under the age of 16. We think that apprehension is inappropriate for the older adolescent, but it should be possible to enter agreements for services after the child has turned 16. This will cover the gap between the maximum age of protection (to age 16) and the age of majority (18). These agreements, whether temporary or for special needs, should be subject to the approval of the Director of Child Welfare. We anticipate that other financial benefits may be available to the adolescent at this age; therefore, the Director will have to develop guidelines for this extension of services to persons aged 16 to 17. It may be that the resources available for such agreements will be limited, but this does not reduce the importance of being able to provide service in exceptional cases where the problem has not been identified before the child's 16th birthday.

7. RECOMMENDATION: "Care by agreement" and "special needs agreements" should be available, upon the approval of the Director of Child Welfare, to persons aged 16 and 17. (Draft Act, s.9(1))

Where children's needs arise from a handicap that goes beyond "temporary circumstances", the child may need to

come into care on the basis of a planned, longer agreement for services. There are very few "special needs agreements" under the present Child Welfare Act. Our proposal requires the Director's approval because of the need to stay within clear guidelines when entering these open-ended agreements. The Director will be issuing guidelines to assist societies in determining time periods, review mechanisms, and the nature of the special needs which will qualify for these agreements. Futhermore, we think that Recommendation No. 6, concerning consent, should also apply to "special needs agreements".

8. RECOMMENDATION: A "special needs agreement" should be provided for separately in the Act. All such agreements should be subject to the prior consent of the Director of Child Welfare, but no statutory time limit should be imposed. (Draft Act, s.9(1))

4. Applications for Protection Hearings

At the moment a children's aid society is able to initiate child protection proceedings by apprehending a child or by obtaining an order to produce the child at the Court hearing. As well, a police officer or a person authorized by the Director of Child Welfare may bring a matter before the Court by following one of the same two procedures. There is some uncertainty about whether an application for a child protection order may be made by an agency or by another person without either an apprehension or an order to produce.

We are considering the possibility of making it clear in the Act that someone other than a children's aid society might initiate a child protection proceeding. We would not allow persons other than the society, police officer or someone authorized by the Director to apprehend a child; however, we think it perhaps should be possible for an interested person to raise the issue before the Court in the face of a decision by the children's aid society not to intervene. Once the matter was before the Court, the judge could decide whether the child needed to be in care during the period of time before the Court hearing on the protection issue. Some have suggested that this should be permissible so long as the initial step is taken of advising the society and allowing an investigation of the situation to take place. One could foresee this opportunity being taken by a hospital, a professional or a committee concerned with the child abuse issue. It might be of particular importance if, in light

of the proposed Young Offender's Act, children below the age of criminal responsibility who commit anti-social acts are to be dealt with as children in need of protection. In some cases, parents themselves might wish to apply; as well, an older child might bring the matter before the Court.

It is true that, at present, a person who is dissatisfied with society involvement or lack of involvement may bring the matter to the attention of the agency's board of directors or the Director of Child Welfare and ultimately may seek a judicial inquiry. This suggested change would not replace these methods; however, in many cases it may be much more appropriate to have the issue resolved at the local level, before the Family Court.

We would stress that the right, if given, would only be one of bringing an application; the power to apprehend would be confined as it is now. It would perhaps be necessary to require an initial step of showing a Court official, such as a judge, that there were sufficient grounds to justify an application; for example, it would be mandatory to show that the agency was given sufficient opportunity to become involved and had chosen not to do so. It is our view that this would reduce the possibility of frivolous applications although in any event these would not be likely because the applicant would still have the onus of proving to the judge that the child was in need of protection. Rather than allowing an application for a protection order, an alternative approach might be to permit an application to a judge to determine whether the judge ought to direct the children's aid society to become involved in a case. Another approach might be one of identifying a particular person in the community who would be appointed and who would take the matter to the Court.

We have not made a specific recommendation but we raise the issue for discussion and feedback. At the moment our view is that the idea is a good one and that it is consistent with the fact that the children's aid society, in most communities, is the primary source of child welfare services for families and children in need.

5. Procedures Before a Hearing

a. "Place of Safety" Definition

There is ambiguity under the present Act surrounding the uses and the meaning of a "place of safety". Essentially a "place of safety" is used by child care workers before the first appearance in court. It was never intended that secure correctional facilities be used prior to a court appearance; the broad definition has led to such practices. Thus the original intention should be clarified. The Director will determine which observation and detention home will qualify as a "place of safety".

9. RECOMMENDATION: The definition of a "place of safety" should be limited to receiving homes, foster homes, hospitals and other places designated by the Director of Child Welfare. Training schools should be specifically excluded as "places of safety". (Draft Act, s. 5(2))

b. Placement During an Adjournment

The power of a judge to order an adjournment under The Child Welfare Act is broad enough to permit "such order for the temporary care and custody of the child as he thinks advisable". There are no time limits, no reviews, and no controls on where the child may be placed. We want to make it clear that placements during an adjournment should normally be in what is intended by the phrase "place of safety"; in no case should a training school be used for such a placement. If the judge wishes to use an observation and detention home for the adjournment, it should be a home which has been designated by the Director of Child Welfare as a suitable "place of safety". The time of an adjournment should be limited to 30 days. Even if a longer period is consented to by the parties, they should have to return to court for a new adjournment order at every 30-day interval. Another issue which may arise relates to the placement of the child during the adjournment period. We are suggesting that there be a presumption that the child remain in care if apprehended or at home if not apprehended, unless the judge orders otherwise. It would be clear that the judge could order the apprehended child to be returned home until the hearing, but it would be necessary to show to his or her satisfaction that this was advisable before such an order could be made.

10. RECOMMENDATION: In ordering an adjournment the court should consider open, child care oriented resources as the most appropriate placement if the child is unable to live at home. In no case should a training school or an unapproved observation and detention home be available for such a placement. No adjournment should exceed 30 days. During such adjournment there should be a presumption that the apprehended child remain in the custody of the society unless the court orders otherwise. The presumption is reversed if the child is before the court on an order to produce. (Draft Act, s.10(9))

c. Notice to the Putative Father

Until recent years, the father of a child born out of wedlock has been a figure ignored by the law. He may have been living with the mother, contributing financial support or offering to accept custody of the child, but he has received no legal rights in return. In child protection law, it was not until 1972 that the putative father received legal recognition as a "parent" under The Child Welfare Act. However, only a narrow category of putative fathers was admitted to parental status - those who were paying child support under a court order or an agreement, and those who acknowledged their paternity and provided for the child. This recognition entitles the putative father to be notified of a child protection hearing to attend the hearing as a party, and to be heard before any court order is made.

In adoption matters, the putative father is entitled to consent to an adoption if the child resides with and is maintained by the father. All other putative fathers are excluded.

We think that in protection and adoption matters, the time has come for a more equal footing between the father and the mother of a child born out of wedlock. This equality will help to reduce the stigma of illegitimacy and will give the child one more opportunity to be raised by a biological parent. Some will argue that the putative father cannot be located or even ascertained. However, we believe that three factors will contribute to certainty in the notice that ought to be given to putative fathers. First, the new Children's Law Reform Act proposed by the government will lay down a set of presumptions and procedures for the identification of paternity. Secondly, we are suggesting a fixed list of persons who would qualify for notice under The Child Welfare Act. The initiative in

many cases would have to come from the putative father, who would register his interest with a local children's aid society. Finally, the usual procedures for dispensing with notice or dispensing with consent would always be available when the putative father cannot be located. Although this appears to be a formidably broad category of putative fathers, we think that it conforms to the actual practice of many societies today. This legislative change would be followed by clear directions to societies which would outline precisely the persons who should be notified under the amended Act. For these reasons, we think that a wider scope for notice to the putative father is a necessary and worthwhile reform.

11. RECOMMENDATION: In protection hearings and adoption consents, a wider category of putative fathers should be entitled to notice of a hearing or the right to give a consent to adoption. (Draft Act, s.5(2) 25(1))

d. Notice of Hearings to Foster Parents

When a child is taken into care, foster parents often play an important role in maintaining continuity and affection for the child. If there is a stable foster home environment, the foster parents have a unique opportunity to observe the child's needs and growth. Yet, when a society wardship must be renewed (e.g. after an initial 12 months) or when termination or review of Crown wardship is sought, The Child Welfare Act gives the foster parents no right to notice of a hearing or a guaranteed opportunity to be heard.

We suggest that many foster parents have valuable contributions to make at hearings. We have studied other jurisdictions where foster parents have full rights to seek guardianship; our own Child Welfare Act acknowledges the right of foster parents to apply for adoption. We advocate opening a wardship hearing to foster parents who have had extensive and recent contact with a child because their testimony may assist the court. We are not prepared to turn the hearing into a custody matter. The notice to foster parents should entitle them only to be heard by the judge. However, a later opportunity to apply for adoption should be preserved. We wish to protect the identity of the foster parents who wish this and we will make provision in the regulations to ensure that notices do not disclose information that might result in unwanted identification. Where he or she considers it to be in the "best interests" of the child, the judge will have authority to dispense with notice to the foster parents.

In Ontario, a number of group homes and other private child care organizations act as "foster parents" to children in care. Although there may be no one person who has had long-term contact with the child, the views of agency staff may be important in the child protection hearing. Therefore, these group homes should be entitled to notice of a hearing and should be able to send a representative as a "foster parent" who has had recent and extensive contact with the child. Their contributions to the hearing may be as equally important as the testimony of foster parents in the single family.

We are also considering whether notice of a hearing should be given to a broader category of foster parent, namely those who have had extensive contact with the child, but not necessarily during the six months immediatley preceding the hearing.

12. RECOMMENDATION: Foster parents who have had continuous custody of a child for six months immediately preceding a protection hearing should be entitled to notice of that hearing and an opportunity to be heard. Group homes and other private child care organizations should be regarded as "foster parents" if the organization meets these time requirements. (Draft Act, s.10(4))

e. The Form of Notice to Parents

The existing forms (Form 10 and 11) which parents receive when they are informed of a protection hearing are lengthy, legalistic and complicated. The forms seem to assume that parents will immediately consult a lawyer in order to interpret the notice. In fact, many parents come to court without a lawyer. They may have no idea what options are available to them or to a judge considering a disposition.

We do not believe that the legal process will suffer if the existing forms are simplified and written in everyday language. Furthermore, we think that Form 10 should contain two new elements: (i) a notice of the grounds upon which the application is being made, and (ii) a notice of the disposition which the society intends to seek. The society should be able to apply at the time of the trial to amend its case in light of new evidence or new factors possibly influencing a disposition.

If the form is altered in this way, the parents and their counsel will at least know the case to be met at trial. The Act makes it clear that a judge may find the child in need of protection on one of the other grounds in the Act and has a very broad discretion in determining the appropriate order to make. Thus, even without an amendment the society probably could not be prevented from putting forward new evidence which might point in a different direction to that suggested in the notice of hearing. In such cases, the judge could protect the parents from surprise by granting an adjournment of the case to allow for preparation.

13. RECOMMENDATION: The forms of notice to parents in protection hearings should be simplified and amended to include a notice of the alleged grounds for protection and of the disposition sought. The Regulations should be amended to allow a society to apply before or during the hearing for permission to rely on grounds in addition to those mentioned in the original notice. (Appended proposed form, pp. 54 ff.)

f. Miscellaneous Changes

The Child Welfare Act now requires the hearing to take place before the court where the child was taken into care. This causes difficulties for the parties involved in some cases. A provincial court judge sitting in a court outside the area in which the child was apprehended should be able to hear a protection case; practically speaking, this will usually mean the court where the parents and the child reside.

14. RECOMMENDATION: A provincial court judge sitting in a court outside the area in which the child was apprehended should be able to hear a case. (Draft Act, s. 5(3) 12(2))

The existing law concerning the departure of a child in care is causing problems because it is difficult to prove that a child left the care of a society "unlawfully". The problem of proof can be resolved by some legal drafting changes. It will continue to be the case that only a child under 16 years of age may be returned to the society under a warrant.

15. RECOMMENDATION: A warrant for the return of a child who has left the care of a society may be issued

if the child has departed from the protective custody of the society without the society's consent. (Draft Act, s. 7)

In a protection hearing, the judge normally records the location where the child was taken into care. However, the Act should be clarified so that this only applies to cases of apprehension. Where an order to produce is made, no such recording should be necessary.

16. RECOMMENDATION: The judge should have to record the location of protection only where the child was taken to a place of safety before the hearing. (Draft Act, s. 10(1))

The Act now requires a notice of all protection hearings to go to the regional welfare administrator of this Ministry in territories without municipal organization. This notice is primarily a matter for financial records of the Province and is not essential to a fair hearing. On the other hand, it can delay proceedings in these territories.

17. RECOMMENDATION: The notice of hearing to the regional welfare administrator should no longer be required under the Child Welfare Act. (Draft Act, s. 10(6))

When the homemaker provisions were added to the Act in 1975, the parents were entitled to notice of the fact that a homemaker had been placed on the premises. The ability to dispense with notice was omitted, but it should be applied here as it does in other notice provisions.

The homemaker provisions of the Act also require some minor amendments because of our adjustments to the "best interests" test. This latter change is discussed later; our amendments here would simply avoid the unnecessary repetition of legislative phrases.

18. RECOMMENDATION: In the homemaker provisions of the Act it should be possible to dispense with the required notice to the parents where such notice is impractical or impossible. The homemaker sections should also be changed to reflect the expanded "best interests" test in the Act. (Draft Act, s. 8, 10(7))

6. Hearings in Protection Cases

a. The Finding of "A Child in Need of Protection"

Before a child can be made a ward, there are two necessary stages in a protection hearing. The judge must consider the reasons why the child was brought before the court and he or she must decide whether that child is "in need of protection". After that finding, the judge may turn to the second stage and consider an appropriate order or disposition. In most cases, the first stage examines the capacity of the parents to provide a good home for their child. At the second stage, the standard of care provided by the parents has been judged to be below the minimum standard set by the Child Welfare Act; the judge then considers the disposition that would serve the child best.

Unfortunately, the separate stages and separate standards in a child protection hearing are allowed to overlap. We think that two changes could help to clarify the two distinct standards. We also believe that the courts should address an amplified number of factors when the two stages of a hearing are conducted.

At the first stage, we think that the court should ask a children's aid society what work has been done or could be done in the child's home before a finding of "in need of protection" is made. The Child Welfare Act should require that work in the home be considered, but such work should not be an absolute pre-condition to a finding of "in need of protection". The society and the court should not be hampered in dealing with emergencies where work in the home is not feasible.

The second stage concerns the disposition and the "best interests" test, which are discussed under the next heading.

19. RECOMMENDATION: Before finding that a child is "in need of protection", a court should have to consider what work has been done (or is possible) by the children's aid society in the child's home. (Draft Act, s. 10(2))

b. The "Best Interests" Test

The second stage of a protection hearing involves choosing from several orders that are possible when a child is taken into care. The judge can opt for a supervision order (child in home, supervised by society), a society wardship order (care and custody by the society for up to 12 months), or a Crown wardship order (more permanent guardianship possibly leading to adoption). Although the statute does not mention a "best interests" test in the section giving these options, we are aware that most judges apply the test that the order should be "in the best interests of the child". We think that the test should be specifically mentioned in the Act and related to the disposition stage of hearings.

20. RECOMMENDATION: The "best interests" test should apply when a judge is choosing an order at the disposition stage of a protection hearing. (Draft Act, s. 12(1))

There is no single, accepted meaning of "best interests" in the law. The meaning of the phrase can change depending on whether custody, protection or adoption is at issue. We think that this flexibility is desirable, but we also believe that some factors which relate specifically to child protection should be mentioned in the statute. This can be done by a definition of "best interests" that includes "all relevant considerations" and a list of particular factors. Remembering that these factors apply only to a disposition (i.e. after a finding of "in need of protection"), we are agreed on the following list of considerations that ought to be reviewed by a judge:

i. the mental and physical health needs of the child including any need for special care and treatment;

ii. the security of the child and the opportunity for the child to enjoy a parent-child relationship and to be a wanted and needed member within a family structure;

iii. the stage of development of the child and the effect upon the child of a disruption of continuity;

iv. whether the resources of the agency that would be caring for the child outweigh the benefit to the child of remaining with his or her parents; and

v. the views and preferences of the child present at

the hearing and, where practicable, the views and preferences of a child who is absent from the hearing may be expressed by a legal representative for the child.

There is another major factor which is relevant in determining "best interests", but we are undecided about the use of this new phrase. The suggested factor, the use of "the least detrimental alternative", is one recommended in recent literature as a substitution for the "best interests" test. Some argue that "best interests" is an overly optimistic test; courts and child care workers may be lulled into believing that a disposition is "best" for the child in an absolute sense. In fact, the placement of the child in care is only the "best move in the surrounding circumstances".

If the courts were required to choose "the least detrimental alternative" and the "best interests" test was deleted, critics argue that a realistic atmosphere would surround the choice. The child has already lost the "best" choice - his original family before their disintegration. What remains is the "least detrimental" of the remaining alternatives for child care. Indeed, by deciding that the child is "in need of protection", the courts have already determined that the child has fallen below minimum standards of care and that interference by the state is required to raise that standard of care. The "least detrimental alternative" would convey the idea of minimum intervention without creating false expectations of a "best" future for all children in state care.

We think that it may be possible to combine the two tests. We may be able to say that: "best interests of the child means the least detrimental alternative for the child having regard, in addition to all other relevant considerations, to the specific factors listed". This statement would combine the traditional test for dispositions with the test of minimum intervention. The combination test would be most effective when the judge considers a placement in the home under society supervision as opposed to a removal under society wardship. The return to the home, with supportive services, may be "best" for the child in an absolute sense, but it may also be the "least detrimental alternative" when compared to a period of society wardship. Whether or not "the least detrimental alternative" is mentioned, we believe that the specific factors outlined above should be included in the statute.

In summary, there are three alternatives which we put forward for public discussion:

i. a "best interests" test alone, followed by the list of factors; or

ii. a "least detrimental alternative" test alone, followed by the list of factors; or

iii. a "best interests" test which is defined to mean "the least detrimental alternative", followed by the list of factors.

We invite public comment on these choices or alternatively, whether there should be a list of factors in the legislation at all.

21. RECOMMENDATION: If a statutory test of "best interests", "the least detrimental alternative" or a combination of the two is attached to the disposition stage of a protection hearing, that test should be followed by a list of factors which must be considered by the judge. (Draft Act, s. 5(1))

The "best interests" test should be uniformly applied when a case comes back to court for a further disposition (e.g. renewal of society wardship for a further 12 months). Likewise, if an application is made to review an order, a uniform "best interests" test should apply. The Act now uses a variety of phrases to say "best interests" and these could be standardized for protection hearings.

22. RECOMMENDATION: The uniform "best interests" test should be applied for further orders of the court and to any decisions to terminate an order under the Act. (Draft Act, s. 12(1), 14, 16(1)(2), 17(1))

c. The Decision of the Judge at the Disposition Stage

There are procedural steps that are followed in some Provincial Courts which could be of assistance in all protection hearings in the province. The Act does not require any written reasons when a child is taken into care through society or Crown wardship. We suggest that

a minimum requirement for some written reasons from the court will be extremely helpful in the future planning for the child. These written statements, to be made part of the record by the judge, should include:

i. the reasons, found by the judge, why the child cannot be adequately cared for in his or her own home;

ii. the proposed plan submitted by the children's aid society for the period that the child is in care; and

iii. any other reasons for finding that the child should be removed from his or her home.

All of these requirements would apply only to a disposition of society wardship or Crown wardship. They are additions to the existing requirement to state the facts or evidence upon which any disposition is based. The statements would be most helpful when a wardship order is reviewed at a later date. We do not expect that societies should be held to the letter of their proposed plans. The realities of child care placements dictate otherwise. However, the reviewing judge at least will have a basis for understanding the progress of the child's situation and the requirement that the proposed plan be disclosed will minimize the risk of the judge being forced to make what some have called a "blind" decision. We are concerned that the details of the proposed plan presented should not result in disclosure of identifying information about the name and address of the person or persons in whose charge the child will be placed and we will ensure that the regulations provide for this. We do not think that the requirement to disclose the plan should require the society to disclose the identity of certain persons (e.g. adoptive parents), nor should the society be required to call them to court. We do feel, however, that the plan should be disclosed.

23. RECOMMENDATION: When a disposition of society wardship or Crown wardship is made by a judge, he or she should be required by the Act to record: (i) the reasons why the child cannot be adequately cared for in his or her own home, (ii) the proposed plan submitted by the children's aid society for the period that the child is in care, and (iii) any other reasons for finding that the child should be removed from his or her home. (Draft Act, s.15)

A supervision order under the present Act does not allow for any detail about the nature and extent of the supervision in the home. We think that it should be possible for a judge to attach terms and conditions to any supervision order. Those conditions could be applied to the parents or the children's aid society. However, the terms and conditions must relate only to the supervision.

24. RECOMMENDATION: When a supervision order is chosen as the disposition in a protection hearing, the judge should be able to attach terms and conditions, applying to the parents and/or the children's aid society, to that order. (Draft Act, s. 11(2))

d. Diagnostic Assessment

There is no power under The Child Welfare Act to require parents or a child to submit to an assessment by a qualified psychiatrist, psychologist or social worker. The existing legislation permits such assessements only when the parents are consenting. The court must decide on the parents' capabilities and the child's needs on the basis of evidence given in the hearing. A coroner's jury report in a recent Toronto child abuse case has suggested that an assessment would help the court to understand a developing pattern of child abuse in a family. We suggest that an assessment may also assist a judge in deciding what is in the child's best interests.

We want it to be clear that this assessment could be ordered by a judge, but that some basic rights of the parents should be guaranteed. First, the assessment should be ordered after the finding that the child is "in need of protection". Only at that stage do the child's best interests come into focus. Secondly, the parents should be entitled to a copy of the assessment in advance of the hearing at which the disposition will be made. They should be able to cross-examine on the report.

There are many professionals who are capable of preparing a diagnostic assessment. We believe that the courts should use existing personnel and resources to carry out the assessment.

In line with parallel provision of The Evidence Act, we are also considering whether the report of the assessment should be served on the parties seven days before the hearing.

25. RECOMMENDATION: In a protection hearing, the court should have the power to order a diagnostic assessment of a child, his or her parents or other persons having custody of a child. The assessment should be carried out at the disposition stage of a hearing by qualified professionals now available to the courts. The parents and the child's legal representative should have the right to see the assessment in advance and to cross-examine the person who prepared it. (Draft Act, s. 10(9))

e. Admission of Evidence from Past Cases or Incidents

There is a legal debate about whether a court can admit evidence from a past incident of child abuse or neglect in a hearing concerning a different child in the family. Some judges have ruled that this "similar fact" evidence is admissible for some purposes. In other cases, it has been ruled that the past evidence is inadmissible.

We suggest that a judge should be able to admit evidence from past proceedings. If the evidence comes from another source (e.g. neighbour's evidence of earlier incident), that past evidence should also be admitted if the authenticity of the evidence is proven to the satisfaction of the judge.

26. RECOMMENDATION: Evidence of a past occurence of child abuse in a family, whether or not it was submitted in an earlier hearing, should be admissible in a protection hearing in order to help prove a pattern of abuse or neglect in a family situation. The judge should be able to require proof of the general validity of the past evidence. (Draft Act, s. 10(4))

f. Power of a Judge to Call a Witness

The existing section in The Child Welfare Act, concerning the summons of persons to give evidence, is ambiguous. Some judges believe that it gives them the power to call their own independent witnesses or experts. Other judges feel that they may only compel the attendance of witnesses requested by the parties before the court. We think that the former interpretation should prevail and that the Act should be changed to permit the judge to call witnesses. A justice of the peace should be confined to the power to issue a summons to a witness.

27. RECOMMENDATION: A judge should have the power to summon witnesses to attend and give evidence at a protection hearing. This should be possible without the consent of the parties in the hearing. (Draft Act, s. 10(3))

g. Presence of Child During a Hearing

The Act now gives total discretion to a judge in deciding whether it is in the best interests of a child to remain in the courtroom during a protection hearing which will decide the future of that child. Some judges use the section to exclude almost all children. Some require almost all children to be present. Others use age guidelines.

We think that the present section should be replaced with two presumptions. For children aged ten and over, there should be a presumption that they will attend a hearing unless good reasons can be shown for excluding them. For children under ten, it should be presumed that they are to be excluded from the courtroom unless good reasons can be shown for their presence. We believe that this mixture of age guidelines and reasonable discretion will help to resolve the extreme differences in current practices.

28. RECOMMENDATION: In deciding whether to allow the child to be present in court during a protection hearing, the court should consider two presumptions: (i) children aged ten and over should be present unless good reasons can be shown to exclude them; and (ii) children under ten should not be present unless good reasons can be shown for their attendance. (Draft Act, s. 13)

h. Access Orders

The existing law allows an order for access to the child to be made "in any case arising under this Part". We think that the intention of the Act is to allow an access order to be made at any time, not just during a hearing on other issues. The access provisions should be clarified so that an original application or an application to vary an access order can be made at any time. A ward 12 years of age or over should be able to apply to the court for an access order or for termination or variation of an existing access order.

29. RECOMMENDATION: It should be possible to apply for access or for an order varying access at any time during or after a hearing on other child protection issues, and such application should be available to the ward who is 12 years of age or over. (Draft Act, s. 14)

i. Public and Media Access to a Hearing

Under the present Act, a judge must exclude all persons from a child protection hearing except the officials presenting the case and the parents and their relatives. The judge may also choose to exclude the friends and relatives of the parents. We think that there are good reasons for preserving anonymity in these cases and the general rule of public exclusion should remain. However, there are legitimate concerns among the public about the way in which our courts operate and the nature of justice in those courts. We believe that those concerns should be met by allowing some access to the general public and a right of access to the media.

The general public, at least, should have a chance to apply for access to the courts. The judge should have the final decision to decide who should be admitted beyond the officials and the parents. However, any member of the public should be able to apply for that admission.

30. RECOMMENDATION: The general public should continue to be excluded from protection hearings; but a judge should have the discretion to admit any member of the public who applies for access to the courtroom. (Draft Act, s. 20)

The media currently is excluded or at least may be excluded from protection hearings. We think that the courts would be better served by a degree of openness in their operations rather than an apparent cloak of secrecy. Therefore, we suggest that a limited number of media representatives, chosen from among themselves, should have access to protection hearings as a matter of right. No discretion would be applied to exclude them.

We are considering whether the judge should be able to exclude the media on narrow and clearly defined grounds (e.g. in the interest of public morals, maintenance of order or the proper administration of justice); if this power were given to the judge, a decision to exclude the

media would clearly be appealable.

In order to preserve the anonymity of persons before the court, we think that the publication of identifying information should be strictly forbidden. Contravention of the prohibition would be punishable as an offence. This rule would avoid sensationalism in reporting and would encourage reports on the operation of the courts. A secondary goal of public education about the court system would also be attained.

31. RECOMMENDATION: A limited number of media representatives should have the right of access to protection hearings. All reports of the media would be subject to a ban on the publication of information that could identify persons who were before the court. The same prohibition should apply to other members of the public allowed to attend the hearing. (Draft Act, s. 20)

7. Separate Legal Representation of Children

The Attorney-General for Ontario has recently received a report from his Committee on Separate Legal Representation for Children. That Committee pointed out that there are cases in child protection where the child has no real advocate speaking for his or her interests. The parents may have a lawyer retained to uphold their rights. The children's aid society, while attempting to represent the child, nevertheless has an obligation to represent the interests of the state or the community in child care issues. That child care system is in turn directed by government budget policies. At the same time, there may be alternatives which have never been considered because neither the parents' counsel nor the society have raised those alternatives for the court. A separate lawyer for the child would have a unique opportunity to examine all varieties of care offered to the child. This role has been tested in British Columbia and other provinces and there is mounting evidence that it is a helpful and important position.

The details of the separate representation proposal, which are available from the Attorney-General's Ministry, will not be repeated here. We are satisfied that there are some cases which merit separate legal representation and that the courts should have the power to make such an appointment. We understand that pilot projects may

shortly be established by the Attorney-General in order to study the role of the separate legal representative. The cost of such a lawyer is a matter being considered by the Attorney-General. The Attorney-General has requested an amendment to The Child Welfare Act which would allow these pilot projects and other approaches to separate representation to go forward. We wish to facilitate and support this request with a legislative amendment.

32. RECOMMENDATION: A judge in a child protection hearing should have the discretion to appoint, at any time before or during the proceedings, a separate legal representative for the child. (Draft Act, s. 5(3))

8. Reviews of The Child's Status in Care

a. Opportunities to Seek Review

The Child Welfare Act now permits a parent, a children's aid society, or a child aged 16 to apply for the termination of Crown wardship. In the case of society wardship, a parent must wait six months before applying to terminate wardship. We think that the notion of review should extend to all situations which involve a child in care. Therefore, it should be possible to seek review of an access order, a supervision order, society wardship, or Crown wardship. A child 12 years of age or over should have the right as well. Normally the judge should be able to substitute any appropriate order available under the Act when reviewing the child's status. However, when a Crown wardship order is under review, the judge should not be able to revert to a society wardship order. We think that it would be unfair to keep the child in care with his or her status in limbo. If the judge wants to continue Crown wardship, he or she can keep the parents involved through an access order. This ban on society wardship orders is consistent with Recommendations 33 and 46 which follow.

A children's aid society should be able to seek review at any time because their plans for the child may depend upon an immediate shift in the legal status of the child. However, the parents or the child should be required to wait at least six months before seeking a review; and thereafter such application should only be made at six-month intervals; this gives a society a reasonable opportunity to measure the success of their planning for the child.

33. RECOMMENDATION: The various termination and review sections of the Act should be made internally consistent by allowing: (i) for a review of the child's status in the case of access orders, supervisory orders, society wardship and Crown wardship orders; (ii) a children's aid society to seek review at any time; (iii) parents or the child 12 years of age or over to seek review after an order has been in effect for six months and thereafter at only six-month intervals; (iv) a judge to substitute any appropriate order under the Act for the original order, except that society wardship should not be possible when Crown wardship is reviewed. (Draft Act, s. 17(1))

b. Review of Crown Wardship After Two Years

When a child becomes a ward of the Crown, a children's aid society assumes all rights and responsibilites for the care of that child. The rights of parents are reduced to an opportunity to seek termination of a Crown wardship by an application to the court. The children's aid society usually will attempt to place their Crown wards in homes for adoption. Failing that, a "permanent" foster home may be the best placement for the child. The biological parents or other persons who cared for the child before the child came into care or was placed for adoption (throughout this section, this broader definition is intended wherever the text refers to biological parent) are not informed, as a matter of right, about these placements, nor are they necessarily allowed to visit their child unless the court has made an access order.

Despite the best efforts of children's aid societies, we know from studies in Ontario and other jurisdictions that a number of Crown wards cannot be adopted, that many move from one foster home to another, and that no real attachment to parental figures develops after the loss of their biological parents. In Ontario today, there are over 7,000 wards of the Crown. Not all of them face a series of disappointing placements, but there is a number who will "drift" in care.

In New York state, they have experimented with a new law that requires automatic review of permanent wardship cases. The court is permitted to review all cases at regular intervals and to order that the child be legally freed for adoption or returned to the biological parents. The law has been acclaimed by child care experts who see

more children quickly finding permanent homes. It is also supported by those who have noted many children being removed from the financial care of the state.

In Ontario, we know that very few parents come forward to ask that Crown wardship be terminated by the court. A few parents keep in touch with their child through a court order for access or on the initiative of the society. Crown wardship automatically ends by law at age 18. We know that many wards then return to their biological families, despite adverse conditions in the home and an absence of many years. All of these factors, particularly the successes in other jurisdictions, have persuaded us that automatic review of Crown wardships should be implemented in Ontario.

The automatic review by a court would take place after two years in care as a Crown ward. The review would be repeated every two years. The review would not be allowed to undermine adoption placements because the children's aid society would have the first opportunity to show what efforts are being made to place a child for adoption. At the same time, we have no desire to put the child back into a limbo of temporary society wardship. Therefore, we think that a court should be restricted to four possible orders upon completion of the automatic review:

i. continue the Crown wardship;

ii. terminate the Crown wardship and return the child to the parents;

iii. terminate the Crown wardship and return the child to the parents under the supervision of a children's aid society; and

iv. grant or terminate the right of access to the child.

We have examined the possibility of conducting administrative reviews instead of relying upon the courts for automatic review. We favour court reviews because of previous court involvement in the cases, and the impartiality of the judiciary. However, we recognize the arguments for administrative reviews of Crown wardship. Perhaps a board or other independent persons could conduct speedy reviews and make recommendations to the court. We invite public comment and suggestions on this choice between the courts and an administrative body.

We believe that Crown wardship reviews constitute a positive step toward more definitive decision-making

on behalf of children. A children's aid society may now plan in anticipation of the automatic review. If they are successful in completing an adoption placement before the automatic review date, there will be no review. Again, the emphasis must be on preserving the integrity of the adoption process.

Where a judge is faced with a review of the access order, we propose to introduce a test that must be used by the court in deciding whether or not to terminate access to the child. This would require the judge to decide whether the plans of the society outweigh the benefit of maintaining access rights to the biological parents.

34. RECOMMENDATION: Crown wardship cases should go back to court every two years for an automatic review of the placement history and future for the child. Upon completing the review, the judge should be able to order one of the following: (i) continue the Crown wardship, (ii) terminate the Crown wardship and return the child to the biological parents, or (iii) terminate the Crown wardship and return the child to the biological parents under the supervision of a children's aid society; and (iv) grant, vary, or terminate an access order. (Draft Act, s. 17(5))

There will have to be a period of transition if this recommendation is enacted. In order to phase-in automatic court reviews, we suggest that the legislation should reach back to cover only those Crown wardships which have been ordered in the past 22 months. In addition to these past Crown wardships, the courts will be sufficiently burdened with future orders and we do not think that it is practical to aim for full retroactivity in conducting these reviews. However, the Ministry will endeavour to conduct administrative reviews of wardship orders that are more than 22 months old.

35. RECOMMENDATION: In order to reduce a sudden burden on the courts, automatic review of Crown wardship should only apply to Crown wardship orders made in the past 22 months as well as to future orders. (Draft Act, s. 17(6))

c. Participants in a Review of Status

The present law allows the children's aid society, the parents, or the child who is a ward aged 16 or over to apply to terminate a Crown wardship. Notice of the

hearing is given to a limited category of persons and, in some cases, the society which cared for the child may not receive notice. We believe that a number of improvements can be made in this part of The Child Welfare Act. First, the changes in notice and opportunity to be heard should apply to all of our recommended reviews of status, not just to applications to terminate wardship.

Secondly, the age of a child who may apply for a review of status should be dropped from 16 to 12. The latter age is customarily used to hear a child's views in custody matters and to listen to a child's evidence in court. We suggest that it is a reasonable age for a request to review one's status in care. The court makes the final determination of what is best for that child.

Thirdly, notice to various persons should be broadened for these review hearings. Where the society applies, the Director of Child Welfare, the parents, the ward, and foster parents of six months' standing should be given notice. Where the parent applies, the Director, the society, foster parents, and the ward should get notice. When the ward (aged 12 or over) is the applicant, the Director, the society and foster parents who qualify should receive notice. If the ward is under 16 years of age, the parents of the ward should also receive notice of the hearing. We do not expect that all of these individuals will show up at a hearing and make a contribution, but we believe that their right to have a voice when the child's future is being determined should be guaranteed.

36. RECOMMENDATION: A society, or a Crown ward aged 12 or over should have the right to apply six months after the order has been made and thereafter at six-month intervals, to the court for a review of his or her status in care. (Draft Act, s. 16(2), 17(1)(2))

37. RECOMMENDATION: The right to notice of review of status hearings should be expanded to include, in all appropriate cases, the Director of Child Welfare, the children's aid society, the parents of the child, a child aged 12 and over, and foster parents who have had a continuous parent-child relationship of six months' duration. (Draft Act, s. 17(1)(5))

9. Appeals in Protection Cases

a. Appeals to County Court

Appeals from orders made under Part II of the Act may be made to the County or District Court by (i) the parent or other person in whose charge the child was at the time of apprehension, (ii) the local director, or (iii) a next friend on behalf of the child. We propose to amend the Act to permit the Director to appeal. This would permit the Director to take intiative in cases where a society may be reluctant to act.

38. RECOMMENDATION: The Director of Child Welfare should be authorized to appeal a protection order. (Draft Act, s. 18(1))

b. Time Limit for Hearing Appeals

At the present time the Act provides that an appeal is to be heard at the first sitting of the County or District court to be held after filing and serving a notice of appeal. In areas such as Toronto, where there are continuous sittings of the County Court, the present wording of this section has caused confusion. In addition, it is difficult to obtain transcripts of the oral evidence in time to meet the existing deadline. We propose to amend the Act to provide that the appeal be heard within 30 days after the transcript of the proceedings has been prepared. In order to establish the date on which the transcript is completed, we will require the court reporter who prepared the transcript to file a certificate with the court indicating the date of completion of the transcript. This will permit the court administrator to set the date for the appeal. The decision to implement this recommendation will depend on whether it is possible, considering existing court caseloads, for the appeal to be heard within this time limit. At the same time, we think that the plans for the child's future care should not be suspended for any unnecessary period. We want it to be clear that appeals should have a high priority. We will be discussing this proposal with the Ministry of the Attorney General.

39. RECOMMENDATION: Appeals from orders under Part II of the Act should be heard within 30 days after the transcript of the oral evidence has been prepared. The court reporter who prepares the

transcript will be required to file with the court a certificate indicating the date on which the transcript was completed. The time within which the appeal is to be heard will run from that date. (Draft Act, s. 18(4))

c. Power to Hold Child Pending an Appeal

At the moment there is uncertainty in the law about where a child may be held pending an appeal and whether the parent or the society may apply for temporary custody. We wish to clarify this matter. We are therefore recommending that the order being appealed be automatically stayed for five days when an appeal is filed to give the appellant an opportunity to apply to the appeal court for temporary care and custody. This change was recommended by a recent coroner's jury inquest. We wish to limit the time period during which an order may be stayed so that the child's status does not remain uncertain for an indefinite period.

40. RECOMMENDATION: Once a notice of appeal is filed, the order being appealed is automatically stayed for five days. At any time after the order is stayed and before the appeal is disposed of, the appeal court judge should have the power to make an order for the temporary care and custody of the child. (Draft Act, s. 18(3))

d. Maximum Length of Society Wardship Order Made on Appeal

In addition to clarifying the authority to make an order for temporary care and custody pending an appeal, we wish to clarify that any period of temporary care and custody is included in determining the maximum length of society wardship ordered on appeal. This would ensure that, in accordance with the usual rule, the child would not be in the care of a children's aid society for a period exceeding 24 months and would be consistent with earlier amendments to clarify the maximum time limits for society care.

41. RECOMMENDATION: The period of time of temporary care and custody pending an appeal should be included in determining the maximum limit of society wardship granted or confirmed on appeal. (Draft Act, s. 18(3)(5))

10. Child Abuse

The Ministry has attached high priority to the issue of child abuse for some years and has appointed a full-time Child Abuse Co-ordinator to be responsible for the operation of the Child Abuse Project including formation of child abuse teams, and the development of inter-disciplinary approaches to child abuse prevention and treatment. A Task Force on Child Abuse, chaired by the Co-ordinator, has been reviewing legal issues in child abuse, including methods of improving existing reporting requirements and the scope and function of a registry system.

a. Reporting Requirements

The Act currently requires every person having information of the abandonment, desertion, physical ill-treatment or need for protection of a child to report the information to a children's aid society or Crown attorney. There is no penalty for failure to report. We are recommending that mandatory reporting of suspected abuse should be required of those obtaining information in a professional or official capacity. This might include physicians, public health nurses, hospital personnel, teachers, lawyers, etc. We are recommending a maximum fine of $1,000 for failure of a professional to report. The proposal to limit mandatory reporting and the penalties to those in the course of professional or official duties is made because we feel that those individuals have the best opportunity and education to detect cases of abuse. At the same time, professional persons should continue to have the security of knowing that they are protected from civil liability if they report child abuse.

Citizens without a professional duty to report child abuse are no longer required by law to report, but will be encouraged to do so by protection from civil liability provided under the Act. As an added encouragement, the protection from civil liability should extend to all persons in regard to all forms of neglect. Only malicious or unfounded reports should be denied protection from civil liability.

In addition, we are recommending that the reports of child abuse should have to be made only to a children's aid society. The existing option of reporting to a children's aid society or to a Crown attorney has caused confusion and the change has been suggested by both children's aid societies and Crown attorneys. The children's aid societies would continue to work with the police in child abuse matters.

42. RECOMMENDATION: Those having grounds in the course of professional or official duties to suspect child abuse should be required to report the information to a children's aid society. There should be a penalty for failure to report, but protection from civil liability should continue as an encouragement for reporting child abuse whether or not there is a requirement to report. (Draft Act, s. 19)

b. Definition of Abuse

We have developed a definition of "abuse" to which the reporting requirements and penalties would apply. We are suggesting that only the more serious forms of abuse should be subject to the requirements and penalties and have defined "abuse" to mean cases of serious physical harm to or sexual molestation of a child. The Interministry Task Force on Child Abuse recommended that the definition should be framed in terms of the condition of the child rather than the behaviour of those responsible for the abuse. We feel that this method of definition would most clearly indicate the condition to be reported as a result of the new amendment. As indicated earlier, the civil protection for those who report will apply to all situations where a child is thought to be in need of protection. The more narrow definition is only to be used for the purposes of the penalty provision.

We are considering broadening the definition to include emotional or psychological abuse and possibly to include less serious forms of physical and sexual abuse. The narrower definition was proposed by the Task Force so that it would be clear to whom the criminal penalties would apply. We are adopting the approach taken by the Task Force to encourage feedback while we consider whether or not to take a broader approach to the issue. We are also considering the possibility of more severe penalties being available upon failure to report when required to do so.

43. RECOMMENDATION: A definition of "abuse" should be added to the Act to include serious physical harm or sexual molestation affecting a child which may have been caused or permitted by a person who has or had charge of the child. (Draft Act, s. 19)

c. Offences and Penalties for Child Abuse

To complement the changes in the area of child abuse reporting, we are proposing to expand the existing sections relating to those who abandon, desert, or inflict ill-treatment to include abuse as defined in the Act and to

increase the penalties from a maximum of $500 or imprisonment for a term of not more than one year or both, to a fine of not more than $2,000 or imprisonment for a term of not more than two years, or both.

We have also reviewed the exising section providing penalties for leaving a child under the age of ten years for an unreasonable length of time without reasonable supervision. We feel that the age limit of ten years is arbitrary and may not be appropriate for children who have special needs. We are therefore recommending that the age limit be removed altogether. This will ensure that the requirement to supervise children is related to the needs of the individual child. Furthermore, we think that the fines should be increased from a maximum of $100 for the first offence and $200 for the second offence (or imprisonment for not more than one year) to a maximum of $1,000 for the first offence and $2,000 for any subsequent offence (or imprisonment for not more than one year).

44. RECOMMENDATION: The penalties for desertion or failure to protect a child should be increased to reinforce the seriousness of the offence. The existing age limit under which a child is not to be left unattended should be removed in order to ensure that a child receives supervision and care consistent with his or her needs and the penalties should be increased. (Draft Act, s. 19)

d. The Registry Options

A recent coroner's jury inquest recommended an expansion of the Child Abuse Registry. As indicated above, the Task Force on Child Abuse has been studying the existing registry provisions and reviewing alternative methods for reporting child abuse. The existing registry is not presently provided for in legislation but is used to record reports of suspected cases of child abuse received by Crown attorneys or children's aid societies.

Three possible alternatives have been considered:

i. a province-wide registry of identifying information that could be used for tracking purposes (i.e., an improved version of what now exists); or

ii. discontinuance of the province-wide central registry and the establishment of appropriate methods of

ensuring the exchange of information at the local level; or

iii. maintenance of a province-wide registry of non-identifying social information for research and planning purposes only, and the establishment of methods of collecting and exchanging identifying information at the local level for tracking purposes.

Empirical research indicates that central registries of identifying information used in other jurisdictions have been expensive, and do not work effectively for tracking purposes. The question therefore arises as to whether, in the absence of unlimited financial resources, existing funds might not be more effectively utilized in providing better services to children in other ways. There is evidence that improved record keeping and information exchange at a local level would deal effectively with situations of repeated abuse. The most significant finding of recent research is that child abusers in almost all cases do not move from one community to another in order to escape detection. Perhaps this finding should be taken into account before we invest heavily in provincial or national registries.

We are also considering measures that must be taken to protect individuals from arbitrary decisions to include their names in a central tracking registry. These measures could include the right of an individual to have his or her name removed from a registry if it can be shown that the name should not be included.

While we have not yet arrived at a decision about the most appropriate alternative to implement, if we choose to provide for a central province-wide registry of identifying information (option (i) above), we would recommend that the Act allow for maintenance of a central registry by the Director for the purpose of recording information received by children's aid societies. We would include a section in the legislation to prohibit disclosure of information contained in the registry with certain exceptions (e.g., by subpoena, to a coroner or for the purpose of proving child abuse). We would also ensure that individuals named in the registry could inspect the registry and have their names expunged after a hearing or upon appeal. Finally, we would guarantee that the identity of the individual reporting abuse is protected.

All of the protections that would attach to a central registry have been included in our Draft Act (s. 19), in order to illustrate how they would take effect if

option (i) is chosen. However, we have no recommendation to make at this time concerning the choice between the three options outlined above. We invite public comment and suggestions about these options.

e. Access to Files

We are concerned that although agencies are generally co-operative in providing access to files that may contain information relevant to a protection case, it is sometimes difficult for a children's aid society to obtain records or documents from every source. We are suggesting an amendment to the Act which would authorize a society to inspect and make extracts of records in the possession of another person or agency. The amendment would provide that if a request by a local Director of a society to inspect records or documents which would assist the society has been refused by the custodian of the records, an application may be made to a judge or justice of the peace for an order authorizing the society to inspect and extract information from the records and reproduce the records. Such authority should be given only when there are reasonable grounds for doing so. We are recommending a penalty for failure to comply with the court order and for furnishing a society with false information or neglecting to furnish information.

Consideration is also being given as to whether additional protection should be included by requiring notice of the court applications to be given to the holder of the documents, by restricting the power to make such orders to judges or by requiring designation in the court order of the specific documents that are required.

45. RECOMMENDATION: If a society has been refused access to records or documents which would assist the society in making an investigation to determine whether a child is in need of protection, it may apply for a court order authorizing access to the premises containing the records and to the records. A penalty should be imposed for failure to permit access, furnishing false information or refusal or neglect to furnish information. (Draft Act, s. 6)

11. Finality for Placement Under Crown Wardship and Adoption Consents

a. Finality in Adoption Placements under Crown Wardship

One of the most difficult problems arising under The Child Welfare Act concerns certainty in adoption placements. Whether the adoption proceeds after Crown wardship or after adoption consents, the question is the same: at what point are the rights of the biological parents terminated in order to guarantee that an adoption placement can continue uninterrupted until the day of the adoption order? The existing law has a number of unsatisfactory features.

When the consents of the biological parents have preceded the placement with adoptive parents, it seems clear that they could come back and seek custody of their child right up to the day of the adoption order. In reality, it would be an uphill struggle for the biological parents because they are never notified when the child is placed for adoption nor do they learn of the date of the adoption hearing. Furthermore, they would face the "best interests" test when they attempted to have custody returned to them. In fact, very few biological parents do seek custody after giving their consent to adoption.

Nevertheless, children's aid societies are concerned about certainty and continuity for the child who is placed for adoption. They do not want to upset the child's future and disrupt the expectations of the adoptive parents. In the past, the societies have looked to Crown wardship as the most secure method of adoption placement. When the adoptive parents notify the children's aid society that they intend to adopt a Crown ward, and the child has been placed with them, the biological parents have no further right to apply for termination of Crown wardship.

In our discussion of reviews of the child's status in care (Recommendations 33 - 37 above), we examined the desirability of a general ability to seek review, no matter what order governs the child. This right to seek a review is a parental right (or the right of a child aged 12 and over) and it must be respected in any proposal for final termination of parental rights. The problem with the existing law is that the biological parents have a right to seek review, but they often are not aware of the right or the act which takes it away. This is an apparent "right without a remedy" because the notice of intent to adopt automatically ends the opportunity to even apply for termination of Crown wardship.

We believe that if the law now gives parental rights, it should also provide a last opportunity to take advantage of those rights. Therefore, the child's biological parents should be entitled to seek one final review of status before their child is adopted. This right will only be meaningful if the biological parents are notified of the proposed intention to adopt whether before or after the adoption placement has been made. We suggest that the society should have to notify the biological parents that a notice of intent to adopt has been filed by the adoptive parents. No identities or locations should be revealed. From the day that this new "notice of intention to adopt" is sent or served by the society, the biological parents should have 30 days to seek a final review of their child's status in care.

It may be argued that this proposal for notice of final opportunity to review will cause adoption placements to be held up or disrupted entirely. We believe that a small minority of biological parents will take advantage of this last opportunity. We think that it is better to risk minimal disruption than it is to provide a right to review that can be removed without the parents ever being aware of this. From the point of view of the adoptive parents and the children's aid society, there will be a new security in adoption placements. Once the 30 days have passed and no parent comes forward, the biological parents' rights are terminated and they cannot re-enter the picture on the eve of the adoption order. This process can be completed before the child is placed for adoption.

We have considered the problems which might arise if the notice must be given after the child and prospective adoptive parents have met one another and some form of "bonding" has begun to develop. This might be possible even though the present proposal would allow the notice to be given before the child is placed with the adoptive parents. At the same time, we are concerned that it not be possible to take away all parental right to apply for review of the child's status until placement with adoptive parents is imminent or highly probable. We would welcome suggestions regarding ways of identifying a time to send the notice which meets both of these concerns.

46. RECOMMENDATION: Where an adoption placement of a Crown ward has been made or is about to be made and a notice of intent to adopt has been filed with the society: (i) the biological parents should be notified of the fact of the proposed adoption, and (ii) the biological parents should have 30 days, from the day that they receive notice from the society of the

intention to adopt, to seek one final review of their child's status in care. (iii) If the biological parents do not seek review within 30 days, their parental rights, except for inheritance purposes, should be fully terminated. The court should have the power to dispense with the notice to the biological parents in appropriate cases. (Draft Act, s. 17(5))

Looking at the above recommendation from the side of the biological parents, there are some specific applications of the proposal which deserve attention. Suppose that the biological parents receive the new notice and apply for a review within 30 days. Because this is a review of Crown wardship, the judge could terminate the wardship or return the child to the biological parents under a supervision order. In both situations, the adoption placement would be disrupted. If the judge decided, on the "best interests" test, that Crown wardship should be continued then the adoption placement would go ahead uninterrupted; the rights of the parents would be fully terminated, except for inheritance rights, which would continue only until the day of the adoption order.

What if there is an outstanding access order under The Child Welfare Act when the opportunity for one final review arises? The parents would be notified that an adoption placement is planned and that the access order will be terminated unless they apply for review. If the parents apply within 30 days, the judge should be able to continue the access order or terminate it because it is inconsistent with an adoption placement which is in the child's best interests. If the judge continues the access order, we think that the adoption should not be possible.

47. RECOMMENDATION: If a biological parent applies for one final review of the child's status at the time of adoption placement or proposed placement and an access order is made or continued at that review, the adoption would not be possible. (Draft Act, s. 29)

Having provided for one last review of a child's status, we should turn to the appeal provisions of The Child Welfare Act. Appeals are distinct from reviews of status because they can relate back to an original order (e.g. a Crown wardship order two years ago). The right to appeal has not caused too much difficulty in the past few years because the right had to be exercised within 30 days of the Crown wardship order. The problem arising from recent cases concerns the power of the courts to extend the 30 days to

"such longer period...as the judge...may order". In some cases the extension permitted by the courts has been over a year. The societies and the adoptive parents have been disturbed to learn that the placement can be re-opened to challenge long after notice of intent to adopt was given and long after the normal 30-day period for an appeal.

Now that we have recommended a full opportunity for review at the adoption placement stage, we think that it is reasonable to set some limits on appeals. Without those limits, there could be an endless series of status reviews, appeals, and time extensions; the entire goal of early termination of parental rights in appropriate cases would be defeated.

We think that the basic principle of "30 days plus time for extension" should be maintained for appeals from any order in Part II of The Child Welfare Act. But when notice of intent to adopt is filed with the Director of Child Welfare, there should be no extensions of time permitted; if the 30 days have already expired, the right to appeal should be lost. It should be remembered that the parents still have time to seek a final review of status; that hearing would concentrate on present circumstances, not the circumstances leading to the original Crown wardship order.

Furthermore, if the final review of status is to be truly "final", there should be no permitted time extension if the parent seeks a review of status and is unsuccessful. If the court continues Crown wardship, the parents would have the usual 30 days to appeal, but no extensions of time would be allowed. The same restriction should apply to anyone else seeking to appeal an order made during a final review (e.g. a children's aid society).

48. RECOMMENDATION: The time for making an appeal under Part II of the Act should be strictly limited to 30 days when (i) the 30 days have expired and notice of intent to adopt has been filed with the Director of Child Welfare, and (ii) a final review of the child's status has been sought and the resulting order is being appealed by any party in the review. (Draft Act, s. 18(2))

We believe that these proposals will act as an incentive to stable adoption placements and will assure the societies and the adoptive parents that there is a point in

time where there is absolute certainty well in advance of the final adoption order.

b. Finality in Adoption Placements under Adoption Consents

Under The Child Welfare Act, adoption placements are often made on the strength of the consent of the biological parents. The consent cannot be taken until seven days after the birth of the child. A parent has an absolute right to cancel his or her consent within 21 days of giving it. However, if the parent wishes to cancel a consent after the 21-day period, the court will consider whether that cancellation is in the child's best interests.

The above rules regulate adoptions in the private setting as well as those processed by children's aid societies. It is clear that consent clears the way for an adoption without any court proceedings and it is attractive for a smooth-running adoption process. Nevertheless, the attractions of the "consent route" to adoption placement are sometimes outweighed by the lasting rights of the biological parents. Under existing law, the biological parents may seek custody of their child right up to the day of the final adoption order.

We believe that certainty should also be introduced to adoption placements which are preceded by consent. There should be consistency with our above proposals concerning Crown wardship; otherwise, a disproportionate number of potential adoptions may be routed through the court for Crown wardship orders. There should be an even balance of advantages between that route and the consent method for adoption placements. In the context of adoption consents, we believe that certainty involves fixing a time at which parental rights to guardianship of the child are terminated.

The only situation which justifies the termination of parental rights is similar to the one we outlined for Crown wardship--where a placement has been or is about to be made on the strength of a consent and a notice of intent to adopt has been filed with the society. If a consent has been given but no notice of intention to adopt has been filed, there should be no opportunity to fully terminate parental rights. However, when the notice of intent to adopt is filed, the termination process should begin.

First, the biological parents should be notified of the fact that a placement is planned or has been made and that adoption is contemplated. Secondly, they should have 30 days from the time that the adoption agency notifies them that the adoption is contemplated to call for a court hearing to determine if the consent can be withdrawn. Thirdly, the court at the hearing should decide whether the parents, based on the child's best interests, should be allowed to withdraw their consent to adoption. This is the hearing and the standard that applies now if consent is to be withdrawn after the 21-day "rethinking" period. If the parents do not apply within 30 days, after receiving notice from the agency, they should lose all rights to guardianship. These rights would be transferred automatically to the adoption agency (see Recommendation 51). These steps are all consistent with the policy recommended under Crown wardship placements. As noted in the section dealing with Crown wardships we would welcome suggestions of an earlier well-defined time before contact with the adoptive parents, when the notice could be sent.

There are a few cautions which should accompany our proposal to transfer guardianship rights before a final adoption order. What if an adoption placement doesn't work out? The breakdown of a placement occurs in only five percent of all placements. Among that five percent, the vast majority of children can be successfully placed elsewhere for adoption. Nevertheless, there may be a problem when a placement breaks down. At this point, the biological parents may turn out to be the best family for the child. However, since they have lost their guardianship rights, they will have to be viewed as new adoptive parents. We believe that this will be a rare circumstance; but the legal anomaly of adopting one's own child will have to remain if early termination of parental rights is to be achieved.

Another concern may be the inheritance rights of the child. We believe that for inheritance purposes only, the legal relationship between the child and the biological parents should be maintained until the final adoption order.

The fact that most parental rights can be terminated soon after the consent-taking stage calls attention to the counselling provided to the biological parents at that time. We will be recommending that the Official Guardian should act as an independent advisor to minor parents when they consent to adoption. In addition, we suggest that children's aid societies and all persons conducting private placements should take extra precautions to

ensure that all parents fully understand the consequences of granting their consent. The parents will certainly have to be informed that they have 21 days to cancel their consent without a hearing. Furthermore, they should be told that when they receive a notice of the proposed adoption, they will have a final 30 days to call for a hearing about the custody of their child.

49. RECOMMENDATION: Where an adoption placement is proposed or is made after taking adoption consents from the biological parents, and when notice of intention to adopt has been received from the adoptive parents, the biological parents should be entitled to notice of this fact. After receiving that notice, the parents should have 30 days to ask a court for withdrawal of the consent. After 30 days the parents' rights, except for inheritance purposes, should be fully terminated. (Draft Act, s. 25(5))

50. RECOMMENDATION: At the time of a proposed adoption, it should be possible for guardianship to be transferred to a licensed adoption agency. (Draft Act, s. 25(5))

12. Adoption

a. Jurisdiction of Court

At the present time, the Supreme Court or the County or District Court of the county or district in which the applicant for adoption or the child to be adopted resides has jurisdiction to make the adoption order. We feel that all matters under The Child Welfare Act should be under the jurisdiction of the same court. We are, therefore, recommending that jurisdiction over adoption matters be transferred to the Provincial Court (Family Division). This change would be a step toward the integration of Family Court proceedings into the Unified Family Court structure.

51. RECOMMENDATION: Jurisdiction over adoption proceedings should be transferred from the County Court or Supreme Court to the Provincial Court (Family Division). (Draft Act, s. 22 & 23)

b. Licensed Adoption Agencies

At the present time children may be placed for adoption either through a children's aid society or privately. We are concerned that the same standards should apply to both children's aid societies and private placements and we are proposing to introduce a number of measures to ensure uniformity. We are recommending that children should only be placed for adoption through a licensed adoption agency. The definition of "licensed adoption agency" should include a children's aid society as well as any other approved private agency placing children for adoption. Each adoption agency should be required to be a non-profit corporation. We will provide procedures in the legislation relating to issuance of a license, and appeals relating to issuance or revocation of a license. The appeals would be heard by the Children's Services Review Board.

While we feel that the placement procedures should be uniform we believe that adoptions by step-parents and close relatives, (i.e. grandparents, uncles or aunts) should not be required to be completed through a licensed adoption agency. This will facilitate adoptions by step-parents and relatives where, in many cases, the child has been in the home of the adoptive parent for some time. The adoption court, however, will have a discretion in such adoptions to refer applications back to the Director of Child Welfare or the local Director of the children's aid society for a recommendation about the adoption. Generally this will be unnecessary.

52. RECOMMENDATION: All placements for adoption with the exception of step-parents and close relative adoptions (i.e. those by grandparents and uncles and aunts), should be effected through a licensed adoption agency. The Children's Services Review Board should be given authority to review matters relating to licensing of adoption agencies. (Draft Act, s. 30)

c. Home Studies in Private Adoption

Our statistics reveal that a majority of all adoptions are completed for step-parents and relatives of children. We have discouraged unnecessary regulation in these cases and we wish to recommend another step in this direction. The existing law requires the Director of Child Welfare to report to the court on the conditions in the child's home. The provision of these services is costly, but they must

be available for all adoptions. However, in the case of relative or step-parent adoptions, the Director is unlikely to recommend against an adoption. In almost all cases the home is satisfactory and, if it is not, the only practical alternative is to leave the child there or institute protection proceedings. The reality is that the child has been connected to that family for some time and the continuity of care usually should not be broken. Therefore, we think that it is more practical to exempt step-parent and relative adoptions from the requirement of a home study. However, if the judge has a concern about the child's welfare, he or she should be able to direct that a home study be undertaken. In all other cases, the adoption agency will be required to notify the Director in advance of the placement. The Director's approval will be required prior to the placement. The Director may require a home study prior to approving the placement.

53. RECOMMENDATION: Adoptions by relatives or step-parents should be exempted from a mandatory study of conditions in the child's home unless that study is ordered by the court. (Draft Act, s. 87) All other adoption placements will require prior approval by the Director. The Director will have authority to require a home study prior to approving a placement. (Draft Act, s. 30)

d. Director's Review of Placement Refusals

Because there are many more prospective adoptive parents than there are available children, a children's aid society faces the difficult task of choosing approved homes for adoption. The process of determining approved homes takes place long before the adoption placement. This function of the society involves interviews, home studies and, above all, a large measure of discretion. If the society refuses to approve a home for adoption placement, there is no appeal from this discretionary power under existing law.

We are not prepared to suggest a full-blown right of appeal for prospective parents in this situation because it would be costly and time-consuming for societies. We also do not wish to suggest that home studies must be done in all cases. It must be remembered that adoption placements are, at best, a privilege, not a right. However, we do suggest that the Director of Child Welfare should be able to review individual cases for possible unfairness in the response to the application, or in the decision to place or not to place a child. The review, conducted at the discretion of the Director, should also be able to cover a removal of a

child from the prospective adoptive home after placement. The Director should examine the facts in any way he sees fit and he should have the power to direct the society to exercise its authority in such a manner as he determines.

54. RECOMMENDATION: Where a children's aid society is alleged to have acted improperly in any particular case involving approval of an adoptive home, placement of a child or removal of a child from prospective adoptive parents, the Director of Child Welfare should have the discretion to conduct a review of the refusal or removal. The Director should have the power to confirm the society's decision or to direct the society to exercise its powers under the Act in a particular fashion to remedy the issue. (Draft Act, s. 27)

e. Appeals

Most adoption applications which come to court are granted. However, where adoptive parents are refused an adoption order, the Act provides no avenue to appeal that decision. The same rule applies to children's aid societies which may seek to appeal. We believe that there should be appeal rights; but the rights should be carefully defined so that adoption orders do not remain open to uncertainty. We suggest that an appeal to the Court of Appeal should be available from a court decision to grant or refuse an adoption. The only proper applicants in such an appeal should be the adoptive parents, the Director of Child Welfare, or a local Director of Child Welfare. Under our new proposals, the rights of the biological parents would have been terminated around the time of the adoption placement. We also believe that an appeal should be allowed from the decision of a court to grant or refuse withdrawal of the consent of the biological parents or former guardian of the child.

The time for filing an appeal should be limited to 30 days from the day of the adoption order or the refusal to make an order. No time extension for appeals should be permitted. When the appeal period has expired, it should be made clear that the adoption order is irrevocable.

55. RECOMMENDATION: When the court grants or refuses an adoption order, there should be an appeal available to the applicants, the Director of Child Welfare or the children's aid society. An order granting or refusing the withdrawal of a consent to adoption of a biological parent of the child

should be available to those giving the consent, the Director of Child Welfare and the children's aid society. The appeal should have to be filed with the Court of Appeal within 30 days of the order or the refusal of an order. After the expiration of the appeal period, the order of the court should be irrevocable. (Draft Act, s. 28)

f. Subsidized Adoption

The Ministry now provides financial subsidies for adoptive parents in a limited number of cases of exceptional needs. These subsidies have only been granted in a handful of cases in the past few years. The process for subsidized adoption is a cumbersome one, involving an application and a Cabinet-approved Order-in-Council for each individual case. We suggest that this process should be simplified by moving the authority for granting subsidized adoption into The Child Welfare Act.

Because of budgetary restraints, we do not expect to be able to increase substantially the number of subsidies which are approved each year, although it may be possible to make more extensive use of the power within existing budgets. However, if the legislation provides for ministerial discretion instead of Cabinet approval for subsidies, the process should be shortened and simplified.

56. RECOMMENDATION: The existing regulation of subsidized adoption should be made part of The Child Welfare Act. The funds available for financial subsidies should be authorized at the discretion of the Minister. (Draft Act, s. 32)

g. Role of the Official Guardian

When steps are being taken to free a child for adoption, the important stage, in our opinion, is when the child is being made a ward of the Crown or when an adoption consent is being given. We feel that it is necessary to protect the rights of all parties at this time. The Act presently requires the Official Guardian or some other person appointed by the judge to act as the guardian ad litem of a minor parent in protection cases. As previously outlined, we are recommending separate legal representation of children in protection hearings. The Act also requires the Official Guardian or some other person appointed by the judge to act as guardian ad litem for minor parents of children

being adopted. We feel that it is important to introduce the Official Guardian at the stage of consent to adoption. We are recommending that the Act be amended to provide that consents to adoption given by infant parents are only valid where such consents are approved by the Official Guardian. The Official Guardian would no longer be involved in such cases at the adoption hearing. We are proposing to exclude the requirement of the appointment of the Official Guardian or some other person as guardian ad litem for the infant parent of a child who is being adopted where the child is being placed by a children's aid society because the Official Guardian would have been involved earlier, as guardian ad litem during the protection proceedings, and will be involved if an adoption consent is given.

57. RECOMMENDATION: Consents to adoption given by minor parents should be valid only where such consents are approved by the Official Guardian. The requirement of representation by the Official Guardian or some other person as guardian ad litem for a minor parent in adoption hearings should be deleted. (Draft Act, s. 23(3), 25(4))

h. Penalty for Payments in Connection with Adoptions

The provisions in the existing law that prohibit the giving or receiving of money or other considerations for the adoption of children are an important deterrent for "black market" operations in this province but these provisions lack clarity and have proven difficult to enforce because of ambiguity in meaning. We propose to clarify the wording of these provisions, increase the maximum penalties that may be imposed for violation, and exclude, therefrom, the giving and receiving of certain considerations such as prescribed fees and expenses of licensed adoption agencies and medical expenses.

58. RECOMMENDATION: Fees and expenses of licensed adoption agencies, legal fees and medical expenses should be excluded from prohibition against giving or receiving considerations for the adoption of children and penalties for violation of the prohibtion should be increased. (Draft Act, s. 31)

i. Fees for Society Services

The regulation-making powers in the Act now permit certain

fees to be charged by children's aid societies for the services they provide. In adoption home study and placement services, there are substantial costs to any agency. When adoptive parents can afford to pay some amount toward these services, we think it should be possible for societies to charge and collect a reasonable fee. The Act should make it clear that the Ministry has the power to establish and regulate the fees to be charged by children's aid societies.

59. RECOMMENDATION: The Ministry should have the legal authority to establish and regulate fees charged by children's aid societies for their adoption services. (Draft Act, s. 30)

FORM 10

The Child Welfare Act, R.S.O. 1970, c. 64, as amended

NOTICE TO PARENTS OF COURT APPLICATION

TO: _____, Mother

AND TO: _____, Father

OF _____, born _____,

_____, born _____,

_____, born _____,

Date of Hearing — On ____day, _____ 197__ at

Time — _____ a.m./p.m.

Municipal Address of Family Court — at _____

the Children's Aid Society of _____ will ask the Court to find that your child(ren) named above is in need of protection.

The following reasons will be given to the Court:

Grounds under s.20(1)(b) and facts in support

(1)

(2)

etc.

Additional reasons at hearing

If on the day of the Court hearing the Children's Aid Society has other reasons, the Society may ask the Court to hear those reasons too. You will be told of any other reasons to be given to the Court.

You have the right to bring a lawyer with you. If you cannot afford a lawyer, Ontario Legal Aid may help you.

Telephone: _____

Specify s.26(1) Order Sought

The Children's Aid Society will be asking the Judge to make the following order:

If the Court decides that your child(ren) is not in need of protection, the child(ren) will be returned to you.

If the Court decides that your child(ren) is in need of protection, he will make one of the three orders listed below:

s. 26(1)(a)

1. SUPERVISORY ORDER

That means that the child(ren) will live with you (or with someone else) but that the Children's Aid Society will watch over the care of the child(ren) for at least six (6) months but for not more than twelve (12) months.

s.26(1)(b)

2. SOCIETY (TEMPORARY) WARDSHIP

That means that the child(ren) is made a ward of the Children's Aid Society for a time that will be not more than one (1) year. During that time the Children's Aid Society will be responsible for the care of your child(ren). The child(ren) will not live in your home unless the Children's Aid Society decides to place the child(ren) with you. While the child(ren) is away from you the Children's Aid Society will work with you and the child(ren) to solve the problems which led to the Court making the order.

If the problems cannot be solved during the time of the Court order, the Children's Aid Society can come back to Court and ask for another year (or less) to work with you and the child(ren).

s.26(1)(c)

3. CROWN WARDSHIP

That means that your child(ren) is taken out of your care and placed with the Children's Aid Society for a time which may go on until your child's eighteenth (18th) birthday. The Children's Aid Society has a duty to try to find

adopting parents for your child(ren) if the Society thinks it is in the best interests of your child(ren). Once adoption takes place, you lose all your rights as a parent to the child(ren).

THE JUDGE'S JOB IS TO DECIDE WHAT IS IN YOUR CHILD'S BEST INTEREST.

Visits

If your child(ren) will be living away from you, you may be allowed to have visits, and you may ask the Court about this at the hearing.

Helping with the cost

The Court may also order you to help with the costs of your child's care if you are financially able to do so.

YOU MAY DISAGREE WITH THE CHILDREN'S AID SOCIETY

You may think that the reasons the Children's Aid Society believes your child(ren) to be in need of protection are wrong, and that no Court order should be made at all.

You may want to give the Court your own reasons.

You may think that the Court should make a different order than the one the Children's Aid Society is asking.

THE JUDGE WILL WANT TO LISTEN TO YOU.

EVEN IF YOU THINK THE CHILDREN'S AID SOCIETY IS RIGHT, the Judge will want to hear what you can tell him about your child(ren) and the problems that have brought you all to Court.

IT IS IMPORTANT THAT YOU BE IN COURT ON THAT DAY.

THE JUDGE MAY MAKE A DECISION ABOUT YOUR CHILD(REN) EVEN IF YOU ARE NOT THERE.

CHANGE OF CIRCUMSTANCES

If your child(ren) has been made a ward of the Children's Aid Society or the Crown, you may after six months have passed ask the Court to look at the case again to see if the child(ren) should be returned to you.

If your child is a Crown Ward and you are notified of a plan for adoption by the Children's Aid Society you will have 30 days to go back to Court. If you do not do so, your rights are finished.

PROOF OF SERVICE:

Province of Ontario)
)
County (District) of)
)
To Wit:)

I, of the of in the of (Occupation) make oath and say:

(a) That I did on the day of , 19 serve (name of person) (personally or as directed by the judge) with a true copy of this notice by (particulars where not personal service)

(b) That I did on the day of , 19 serve (name of person) with a true copy of this notice by sending the same to by ordinary mail on the day aforesaid addressed to

(c) That I have been unable to serve (name of person) with this notice and that I have made the following efforts to cause him to be notified:

SWORN before me at the
of
in the of
this day of , 19

(signature(s))

A Commissioner etc.

FORM 11

The Child Welfare Act, R.S.O. 1970, c. 64, as amended

NOTICE OF APPLICATION TO END A PROTECTION ORDER OR FOR A FURTHER ORDER

Delete where inapplicable

TO: _____, Mother

TO: _____, Father

TO: _____, Child

Delete where inapplicable

TO: The Children's Aid Society of _____

AND TO: The Director

Date of Hearing

On _____day, _____ 19__

Time

at _____ a.m./p.m.

Municipal Address of Family Court

at _____

Name of Child(ren)

the Court will review the placement of _____.

Order sought

On the Review the Court will be asked to do the following:

_____

The Court has the power to do the following:

(i) End the existing order.

(ii) Make any one of the following orders:

1. SUPERVISORY ORDER

That means that the child(ren) will live with his parents or with someone else, but that the Children's Aid Society will watch over his care for at least six (6) months but for not more than twelve (12) months.

2. TEMPORARY WARDSHIP CONTINUED

That means that the child(ren) will stay in the care of the Children's Aid Society for a further time. That extra time will not be more than twelve (12) months.

3. CROWN WARDSHIP

That means that the child(ren) is taken into the care of the Children's Aid Society for a period which may go on to his eighteenth birthday. The Children's Aid Society has a duty to find adopting parents for the child(ren) if the Society thinks adoption is in the child's best interests. Once the child is adopted, his parents lose all their rights to him.

4. MAKE OR CHANGE THE ORDER ABOUT VISITS

If the child will be living away from you, you may be allowed to have visits. If you are not happy with the present visiting arrangements, you may be allowed to have them changed. You may ask the Court about this at the Hearing.

YOU MAY BE AGAINST THIS APPLICATION.

You may think that the Court should make a different order than the one being asked.

THE JUDGE WILL WANT TO LISTEN TO YOUR REASONS.

EVEN IF YOU AGREE WITH WHAT IS BEING ASKED FOR, the Court will want to hear what you can tell him about the child(ren).

THE JUDGE'S JOB IS TO DECIDE WHAT IS IN YOUR CHILD'S BEST INTERESTS.

IT IS IMPORTANT THAT YOU BE IN COURT ON THAT DAY.

THE JUDGE MAY MAKE A DECISION ABOUT THE CHILD(REN) EVEN IF YOU ARE NOT THERE.

. . . . . .

PROOF OF SERVICE:
Province of Ontario
County (District) of
To Wit:

I, of the of in the of (Occupation) make oath and say:

(a) That I did on the day of , 19 serve (name of person) (personally or as directed by the judge) with a true copy of this notice by (particulars where not personal service)

(b) That I did on the day of , 19 serve (name of person) with a true copy of this notice by sending the same to by ordinary mail on the day aforesaid addressed to

(c) That I have been unable to serve (name of person) with this notice and that I have made the following efforts to cause him to be notified:

SWORN before me at the
of
in the of
this day of , 19

(signature(s))

A Commissioner etc.

3. The Day Nurseries Act

1. Introduction

We are proposing several short-term amendments to The Day Nurseries Act which will both answer requests from the public for extension of services and also accord with the Division's desire to establish a broad range of standards for children's resources in Ontario. We propose to increase the maximum age of children who may be cared for, in both a day nursery and a private home, from 10 years to 12 years. We also wish to expand the opportunity to offer needed in-home services for handicapped children. Our proposed amendments will also include a licensing requirement for day nurseries operated by private schools and children's mental health centres. In addition, we propose to change the name of the Act to The Children's Day Care Act.

2. Standards and Licensing

A primary objective of the Children's Services Division is the implementation of a consistent range of standards for child-caring facilities in the province. The Day Nurseries Act currently provides a detailed set of physical plant and staffing standards which must be complied with for licensing of day nurseries. We are concerned that some day nurseries, currently exempted from licensing requirements under this Act, are not required to meet standards outlined in any other statute. Many private schools, registered under The Education Act, 1974, have day nursery programs for children younger than the age of compulsory elementary school attendance. Such programs are not covered by The Education Act and therefore are not inspected or supervised by the Ministry of Education. We therefore propose to require licensing under The Day Nurseries Act of any such day nursery components of private schools.

Day nurseries as part of children's mental health centres are currently subject to some licensing standards under The Children's Mental Health Centres Act. However, licensing under The Children's Mental Health Centres Act limits the provision of service "to those children...who are identified to be suffering from mental or emotional disorders". This limitation eliminates the possibility of integrating, within a day nursery operated by a children's mental health centre, programs for all children, however their needs may be labelled. Such integrated programs are supported by both Early Childhood Education specialists and professionals involved in the treatment of children's mental health disorders. We are thus proposing the revocation of the existing exemption of a day nursery operated as part of a children's mental health

centre. This would require such day nurseries to be licensed in future under The Day Nurseries Act. They would also continue to be subject to The Children's Mental Health Centres Act for the purpose of funding.

1. RECOMMENDATION: The definition of "day nursery" should be amended by deleting the exemption, from licensing under the Act, of day nurseries which are part of private schools and of children's mental health centres. (Draft Act, s. 1 (2))

At the present time, the legislative authority to regulate and inspect private-home day care exists where the municipality and/or Minister has purchased that day care service, thereby subsidizing the placement cost of children in those homes. However, there are a number of agencies which offer day care for less than five children in a variety of private homes which may not be regulated because payment for those children is not being subsidized by the municipality. The Advisory Council on Day Care has recommended the licensing of such agencies offering private-home care at more than one location. Such licensing of an agency, in addition to regulation and inspection of any subsidized home operated by that agency, will ensure that any standards required by the Act will have a broader application than is presently the case.

2. RECOMMENDATION: Private-home day care agencies should be licensed and authority should be given to regulate and inspect private-home day care agencies. (Draft Act, s. 9)

At present, standards set down by regulation relate to two classes of nursery service: handicapped and non-handicapped. The Ministry wishes to clarify the authority to prescribe classes of day nurseries. Standards may then be developed which are applicable to different classes of nurseries.

3. RECOMMENDATION: Authority should be given to make regulations prescribing classes of day nurseries and to set standards applicable to each class. (Draft Act, s. 11(1) (a))

3. Maximum Age

The maximum age for the provision of day nursery service for non-developmentally handicapped children is 10 years under the present Act. There have been many requests from the public to raise the maximum age to 12 years. Many children between the ages of 10 and 12 years require supervision after elementary school hours. Recognition of this need has led us to propose that s. 40 of The Child Welfare Act be amended to remove the arbitrary maximum age of 10 years after which children may safely be left alone. We are proposing an age limit of 12 years for the day nursery program because we feel that it is inappropriate to introduce teenagers into what is essentially a program for younger children. We also feel that parents would not use the day nursery service for children over the age of 12 years.

4. RECOMMENDATION: The maximum age of non-developmentally handicapped children served by both day nursery and private-home day care programs should be raised from 10 to 12 years. (Draft Act, s. 1(2) (e))

4. Extension of Services for Handicapped Children

At present, subsidy under The Day Nurseries Act is provided for developmentally handicapped children under the age of 18 in day nurseries, but only under the age of 10 in private-home day care. We feel that this is an inconsistency in the statute, which, if rationalized, will provide a broader range of service to older developmentally handicapped children.

5. RECOMMENDATION: The definition of "private-home day care" should be amended to include service to developmentally handicapped children up to the age of 18 years. (Draft Act, s. 1 (2) (e))

In-home services for handicapped children are increasingly being used by day nurseries. We want to provide the authority, in The Day Nurseries Act, to provide, and perhaps expand, this service in the future. We feel this is an area in which both parents and children will benefit from an extension of our current program. A training program for parents of handicapped children, and the provision of specialized direct service to such children in their homes, is consistent with the great need for preventive services in Ontario.

6. RECOMMENDATION: Authority should be given to purchase in-home services for handicapped children, and authority should be given to make regulations defining in-home services, terms and conditions under which such services may be provided, and classes of persons eligible for such services. (Draft Act, s.3(4), 13)

5. Children's Services Review Board

It has become apparent to us during our review of all those statutes administered by the Children's Services Division, that a board of review is required by several programs. For consistency and continuity throughout the Division, we are recommending the creation of a Children's Services Board of Review. This board will be established by the newly named Children's Residential Services Act (currently The Children's Boarding Homes Act). We therefore propose to revoke all reference in The Day Nurseries Act to the current Day Nursery Review Board. We would then provide that any license-review hearing be heard by the Children's Services Review Board.

7. RECOMMENDATION: All administrative hearings required by The Day Nurseries Act should be heard by The Children's Services Review Board. (Draft Act, s. 10)

6. Definitions

At present The Day Nurseries Act defines a day nursery as being a place that receives children "primarily for the purpose of temporary care and custody". The Ministry has received many requests from the service community to amend this definition so that it more accurately reflects the educational aspects of the program. We propose to require programs that have a primary purpose other than temporary care and custody to be licensed. This will ensure that minimum standards are applied to such programs.

8. RECOMMENDATION: The definition of "day nursery" should be amended to include either temporary care and custody or guidance, or both, for those children enrolled in the program. (Draft Act, s.1 (2))

Currently the operator of a day nursery to whom a license is issued may be a person, a partnership or an association of persons. The issuance of licenses to associations or partnerships has created considerable difficulty because change in partners or members often necessitates issuance of a new license. We feel that the definition of an operator should be amended to require that one person or an incorporated body is responsible for the operation of a day nursery.

9. RECOMMENDATION: The term "operator" should be defined as meaning an individual or corporation. (Draft Act, s. 1(2))

7. Enforcement Provisions

There now exists the statutory authority for the Director of Day Nurseries to obtain an injunction enjoining any person from continuing any act or default for which the person is convicted under section 6 (1) or section 14. The Ministry wishes to expand this section to permit an application for an injunction without a prior conviction having been obtained, in order to ensure the safety and well-being of children in day nurseries or private-home day care.

10. RECOMMENDATION: Authority should be given for the Director of Day Nurseries to apply to a judge for an injunction enjoining any person operating a day nursery or a licensed private-home day care agency from contravening any provision of this Act or its regulations. (Draft Act, s. 15)

Under the current Act, a hearing is required to determine whether approval for licensing of a corporation should be suspended or revoked. Such a hearing is not required where the consent of the corporation has been obtained. It is sometimes difficult to obtain that consent when a corporation no longer operates a day nursery and consequently may not be easily contacted. We propose the use of notice provisions combined with a time limit for response by the corporation in order to expedite the revocation or suspension hearing.

11. RECOMMENDATION: Revocation of approval of a corporation should be permitted without the corporation's consent, where notice has been properly served and the corporation has been given an opportunity to request a hearing but has not done so within a prescribed time limit of 15 days. (Draft Act, s. 5)

We are considering expanding the definition of "provincial supervisor" to permit us to utilize other resources already in the field for the purposes of inspection under the Act.

12. RECOMMENDATION: The definition of "provincial supervisor" should be expanded to permit us to utilize other existing resources in the field for the purposes of inspection under the Act. (Draft Act, s. 10)

8. Miscellaneous Proposals

We are concerned that there is presently no provision in the Act or regulations which limits access to records maintained about children enrolled in day nurseries. Many parents and municipalities have requested that financial data, needs tests and medical information about children in day nurseries or private-home day care be kept confidential. This is a concept which we support and which we propose to introduce by regulation under the Act.

We do however realize that there are situations where agencies should have access to client files. There is presently a committee within the Division which is looking into the question of appropriate exchange of information between agencies. It should be emphasized that although we do support the overall principle of confidentiality, any action taken in this area will recognize the recommendations put forward by this committee.

13. RECOMMENDATION: Information relating to the financial circumstances of parents and to the medical condition of children should be confidential.

We recommend transferring the determination of the level of subsidy payments from the Act to the Regulations. We also wish to require Ministerial approval of expenditures before they are incurred for the operation of day nurseries and the purchase of private-home day care and day nursery services. This is in accordance with general Ministry policy to achieve greater financial flexibility for our funded programs and to allow the Children's Services Division to implement a new coherent funding approach as may be necessary and as is developed.

14. RECOMMENDATION: The determination of level of subsidy should be made by regulation. The Minister's prior approval should be required for expenditures for the operation of day nurseries and the purchase of private-home day care and day nursery services. (Draft Act, s. 6)

Finally we recommend changing the name of the Act to The Children's Day Care Act. This change will more accurately reflect the scope and purpose of the Act and is also complementary to the change in name of The Children's Boarding Homes Act to The Children's Residential Services Act.

15. RECOMMENDATION: The name of the Act should be changed to The Children's Day Care Act and any reference to "day nursery" should be changed to "day care centre". (Draft Act, s. 16)

4. The Children's Boarding Homes Act

1. Introduction

It is our intention to develop a statutory structure for the establishment and regulation of standards in all children's residential care programs. We have reviewed the scope of the existing Children's Boarding Homes Act, and the regulations made pursuant to that Act, and we have identified certain short-term amendments which will begin to align this statute with that objective. We wish to amend the categories of facilities exempted from compliance with the Act. We are also proposing that the authority of the Act be extended to those facilities providing service to three or more children. We wish to change the present process of registration to one of licensing and also to expand the authority of the Province over premises contravening the Act, and the regulations under the Act, in order to more adequately protect the welfare of children being cared for in residential programs. Finally, in light of our broader objectives, we propose to change the name of the Act to The Children's Residential Services Act.

2. Licensing Function of Act

The existing Children's Boarding Homes Act provides an appropriate framework for our future development of standards in all children's residential care facilities. The allocation of funding, and the decision to fund a specific program, are separate issues which will continue to be dealt with in legislation dealing specifically with the resources in question.

However, residential care facilities will have to satisfy the criteria, or standards, set out in the regulations made pursuant to the Act, before they will qualify for funding by the Government. We propose to change the current system of registration under the Children's Boarding Homes Act to one of licensing. Registration is defined as the automatic recording of a name, usually after payment of a prescribed fee. In fact, although "registration" is the term used in The Children's Boarding Homes Act, this has not been the process followed. Rather, "licensing", or the granting of permission to operate a boarding home has been the procedure set out in the Act. Our proposed adoption of the term "licensing" is a more accurate reflection of the process currently followed by the Act. We also wish to license not only the physical facility, but also the operators of these facilities. This will accord with our long-term goal of setting professional standards for child care workers.

We have established a Standards Branch of the Children's Services Division which will produce, in 1978, a paper outlining our proposed approach to residential care standards. We anticipate that certain standards will be common to all facilities and programs (for example, some physical plant standards) and that certain other standards will be unique to a specific program (for example, levels of care applicable to a particular treatment program). We also expect that some proposed standards will be immediately attainable, while others may not be achieved until some time in the future. We do not intend to revoke any already existing standards in other statutes dealing with residential care administered by the Division. This is because we realize that standard-setting, and the completion of the work necessary to ensure compliance with those standards, are both gradual processes and present standards should remain in place until replaced by better ones.

We wish to begin the standard-setting process by amending the regulations - enabling section to expand our authority to impose standards.

We propose to change the name of this statute to The Children's Residential Services Act and to alter the terminology used throughout the Act from "children's boarding home" to "children's residence". We also wish to introduce the term "operator", defined as a "person or corporation which has control and management of a children's residence". We would correspondingly delete all reference to the term "occupier", which is currently used in the Act. We feel these changes will more accurately reflect the scope and purpose we envisage for the Act.

1. RECOMMENDATION: The current authority to register a facility under The Children's Boarding Homes Act should be changed to an authority to license such facilities and their operators. (Draft Act, s. 6)

2. RECOMMENDATIONS: The regulations - enabling section of the Act should be amended to provide a broad power to set standards for residential care facilities. (Draft Act, s. 13)

3. RECOMMENDATION: The name of The Children's Boarding Homes Act should be changed to The Children's Residential Services Act, and the term "children's boarding home" should be replaced by the term "children's residence". (Draft Act, s. 15)

4. RECOMMENDATION: The term "operator" should be substituted for the term "occupier", which is currently used in the Act. "Operator" should be defined as "a person or corporation which has control and/or management of a children's residence". (Draft Act, s. 1)

3. Programs and Facilities Excluded from the Act

The present s.1(c) of The Children's Boarding Homes Act, in defining the term "children's boarding home", specified that such a definition will not include certain categories of facilities which are presumably now governed by other provincial statutes. We are concerned that the standards which are now in effect for many of these categories are scattered inconsistently throughout different Acts. As previously stated, it is our intention that all children's residential care facilities will eventually become subject to those standards set by the newly named Children's Residential Services Act. We have reviewed each of the exclusions contained in the present Act and propose to alter the definition as an intermediary measure leading to our long-term objective.

We propose to exempt the following: houses licensed under The Private Hospitals Act, which are controlled by the Ministry of Health; hostels intended for short-term accommodation, because of their emergency nature and existing regulation by municipalities; private schools under The Education Act, and any other residential program which is supervised by the Ministry of Education; summer camps; hospitals funded by the Provincial Government; any residential program regulated by the Ministry of Health; and, facilities governed by The Homes for Special Care Act. We plan, at some future date, to set standards and require licensing for those summer camps which may be part of a treatment program. The exemption extended to hospitals will not apply to regional children's centres. These children's programs will require licensing under the Act.

Currently exempted programs and facilities which will in future require licensing include: foster homes; charitable institutions; children's mental health centres; observation and detention homes under The Provincial Courts Act; children's institutions; homes for retarded persons; and, training schools and group homes operated by the Juvenile Corrections program. We propose also to revoke the clause exempting, in general, facilities in receipt of financial aid from the Province.

We realize that adequate standards do not yet exist for all children's residential care facilities. We also recognize that the proper development of a consistent range of standards for our varied programs will require time. Once those standards are proposed, it is realistic to expect that existing facilities will also need time to implement these standards. Thus we wish to provide authority in the regulations temporarily to exempt some of those facilities for which we propose to require licensing in the future. We wish to emphasize that such facilities, exempted under the regulations from compliance with The Children's Residential Services Act, will continue to be subject to standards set in any other legislation applicable to those facilities.

Our proposed amendment of the statute requiring licensing for an increased number of facilities, combined with the power to exempt certain of those facilities through regulation, will enable us to gradually introduce new standards as they are developed.

We also have considered the difficulties inherent in requiring that direct government-run facilities (such as certain training schools and detention homes) be licensed. We would, in effect, be inspecting and licensing ourselves. We feel quite strongly that the standards we seek to impose on privately operated facilities should also apply to government-run facilities. Rather than relying on the assumption that the government's public accountability will ensure compliance with these standards, we wish to entrench in the statute, the government's obligation to comply. We are considering the use of special, independent inspection and licensing procedures for government operated facilities. In addition, recent approaches have indicated the need for the government to move away from direct service delivery in many cases. Already a majority of detention homes are operated privately under the purchase of service contracts. We wish to provide now for the trend which we expect to continue in the future.

5. RECOMMENDATION: The definition of "children's boarding home" ("children's residence") should be amended to require licensing for certain presently exempted facilities. (Draft Act, s. 1)

6. RECOMMENDATION: The regulations enabling section of the Act should be amended to permit exemption of certain programs or facilities from licensing requirements until the new standards are developed. (Draft Act, s. 13)

4. Application of Act

The Children's Boarding Homes Act currently requires registration for all premises where five or more children, not of common parentage, are cared for, unless specifically exempted. The Ministry has been concerned, for some time, that the choice of the number five may exempt certain programs which should properly be made to comply with licensing standards. To cover such programs, we propose to require licensing not only of those premises in which three or more children are cared for, but also of operators providing care for three or more children. There has been considerable community demand to make such a change, and the Ministry has publicly undertaken to do so.

The Act now defines a "children's boarding home" as a premises in which children live "primarily for the purpose of receiving lodging, boarding or care". The Ministry has received requests from the community to amend this definition to reflect the fact that many children's residences provide care for children with special needs. In addition, we are concerned that there may be residences whose primary purpose is not "lodging, boarding or care", but rather the provision of services to meet specialized needs. These residences do not fall within the scope of this or any other Act. We propose to amend the definition of "children's boarding home" ("children's residence") to such residences. We will not be deleting the intent of the present definition, but rather we will reword it to also capture the provision of specialized service. This proposed amendment also accords with our plan to make all children's residential care facilities subject to this Act.

7. RECOMMENDATION: The definition of "children's boarding home" ("children's residence") should be amended to require licensing of facilities and of operators providing care for three or more children. (Draft Act, s. 1)

8. RECOMMENDATION: The definition of "children's boarding home" ("children's residence") should be amended to clarify that facilities providing residential, sheltered or specialized group care are subject to the provisions of this Act. (Draft Act, s. 1)

5. Children's Services Review Board

Our proposal that facilities subject to the Act be licensed requires that we have a review mechanism for applicants and licensees. Similarly, we require now and will require in the future, review procedures for other programs within the Children's Services Division. Thus we propose to create, under the Children's Residential Services Act, a Children's Services Review Board which will have the authority to review a variety of applications dealt with in Children's Services legislation. Our intention is to establish a panel of board members, with the Chairman then designating which members will hear each case.

9. RECOMMENDATION: A Children's Services Review Board should be created. (Draft Act, s. 4)

6. Inspection and Injunctions

Our proposed standards and licensing provisions would prove meaningless unless we also provided for a strong and broad authority to inspect facilities and their records. We wish to implement a penalty of $1,000 for preventing provincial inspectors from entering a facility or for obstructing the inspector's investigation of a facility. In accordance with recent experience in institutional evaluation, we also hope to utilize resources which are already in the field for the purposes of inspection under the Act. Such resources may not necessarily be personnel employed by the Ministry.

Finally, we wish to provide for the obtaining of an injunction against any person operating in contravention of the Act or continuing to violate the Act after a conviction has been registered. We feel that these proposed amendments, dealing with inspections and injunctions, will provide the Ministry with enough authority to ensure the safety and well-being of children in children's residential care facilities.

10. RECOMMENDATION: The existing sections of the Act, dealing with inspections, should be expanded. (Draft Act, s. 12)

11. RECOMMENDATION: The authority should be provided to permit the Ministry to obtain an injunction of breach of the Act, or any continuing breach after a conviction under the Act. (Draft Act, s. 14)

12. RECOMMENDATION: The definition of "provincial supervisor" should be expanded to permit us to utilize other existing resources in the field for the purpose of inspection under the Act. (Draft Act, s. 12)

5. The Children's Mental Health Centres Act

A major objective of the recent integration of childen's services is the development of a coherent set of standards by which to regulate and evaluate children's services in general. We have examined The Children's Mental Health Centres Act and we feel that some short-term amendments are necessary to enable this goal to be achieved.

At the moment children's mental health centres are both licensed under the Act and designated by the regulations in order to become eligible for funding. It is our opinion that a clear distinction needs to be made between the decision to license a resource and the decision to provide funds for its operation. The licensing function should relate to the nature of the operation. As is made clear in the discussion of proposed amendments to other Acts, the goal is to have all residential programs licensed under The Children's Residential Services Act and all day care programs licensed under the new Children's Day Care Act. This is not to suggest that the standards which are developed should not reflect differences in residential and day care programs, but only that there should be one range of standards relating to the full spectrum of facilities and operations within the field. The Division will shortly be producing a paper which outlines both the short-term and long-term standards development now underway. This will include standards relating to such areas as the physical facility, health factors, staffing and the rights and responsibilities of staff, children and parents.

Some children's mental health programs are neither residential in nature nor do they provide day care services. It is planned that standards will be developed which relate to these programs and that this will be done, prior to omnibus legislation, through existing or new statute law. As well, during the interim period, while standards are being developed, the present authority of Children's Mental Health Services Branch personnel, particularly program advisors, to provide input, assistance and direction to existing services and programs, needs to be clarified and reinforced.

A separate issue relates to the decision to fund resources under the Act. It is our view that the power to approve or not approve programs for funding should remain in the Act as a decision of the Minister of Community and Social Services. The decision to fund may be dependent upon factors which approximate those covered by standards relating to levels of care, financial accountability, etc., but it is also a decision which could be made on the basis of need or lack of need for the resource, the desire to ensure regional accessibility to service and because of compliance or non-compliance with the special requirements of the Act.

Thus, the determination to fund or not to fund is a process which is left in the Act. In the short run the distinction is left less clear than it ought to be to facilitate early standards development, but the long-term goal is to separate the two activities explicitly within omnibus legislation.

Decisions relating to standards compliance will be subject to the review procedures contained in the relevant legislation (e.g. The Children's Residential Services Act). The decision to revoke funding would be preceded by a hearing before a person or persons appointed by the Minister who would make a recommendation to the Minister.

A number of other changes are suggested both to carry out the above-noted intent and to resolve other short-term concerns with the Act.

a. A requirement that all centres be operated by non-profit corporations. This is presently the practice and it is felt it should also be the law.

b. A power to approve and revoke an approval for funding purposes on the basis of need or lack of need for the service in a particular area.

c. The power to prescribe provisions of centre by-laws and to require Ministerial approval of by-laws and amendments.

d. A power to pass regulations exempting a corporation or centre from the application of specific provisions of the Act or regulations. This would permit the Minister to fund corporations and centres which are not able to comply immediately with all the provisions of the Act or regulations. This authority would be used only in exceptional cases. For example, if the services provided by a centre are urgently needed in a community and the centre is not able to comply immediately with all staffing requirements because of a shortage of qualified staff in the area, an exemption from compliance with staffing standards might be granted.

   Exemption would be for a specific period of time. We would not recommend that an exemption be granted unless we are satisfied that an acceptable standard of service can be provided during the period of the exemption.

e. Transfer of the funding mechanism to the regulations. At the present time, funding for the centres is provided in accordance with the provisions of the regulations under The Mental Health Act. As has been indicated, the intention is to rationalize funding levels and cost-sharing approaches over the next period of time,

partly as a result of standards development. It is necessary to provide for establishment of the funding formulae within the regulations both to provide flexibility and to ensure that a rational approach to funding can be implemented prior to the development of the long-term omnibus legislation. A paper on the standards development necessary to rationalize funding will be ready for consultation early in 1978.

f. A power to approve centres for funding retroactively. This is to enable, in special cases, new centres to receive funding while the approval process is continuing.

1. RECOMMENDATION: The Minister should be given the power to approve for funding purposes non-profit corporations as children's mental health centres and to revoke such approvals. The licensing provisions should be revoked. (Draft Act, s.s.1 & 3)

2. RECOMMENDATION: Approval for funding and the revocation of such approval should be permissable on the basis of need or lack of need for the service. (Draft Act, s.3)

3. RECOMMENDATION: Authority should be provided to exempt designated approved corporations or approved centres from the application of certain provisions of the Act or regulations for a limited time period. (Draft Act, s. 7)

4. RECOMMENDATION: All by-laws and amendments to by-laws should be subject to Ministerial approval. (Draft Act, s. 6)

5. RECOMMENDATION: The funding mechanism for such programs should be transferred to the regulations, to enable development of a standard funding approach for children's services.

6. RECOMMENDATION: For funding purposes, there should be a power to approve retroactively. (Draft Act, s. 3)

In order to allow short-term development of standards and a rational funding approach to residential services, it is necessary to make a small number of amendments to The Children's Institutions Act. Once again, this is intended to provide for interim necessary changes on the road to omnibus legislation which will deal with a broad range of issues relating to children's services.

a. As with other residential programs for children, these institutions will now be required to obtain a license under The Children's Residential Services Act, with the Minister retaining the power to approve the funding of programs and to revoke such approvals. "Need" for the service is included as a factor in deciding whether or not to fund the program. Procedures for a hearing in the face of a decision to rescind funding are retained and these resemble those established under The Children's Mental Health Centres Act.

b. The funding mechanism is transferred to the regulations to allow development of flexible funding approaches for all residential services.

c. The Minister is given approval authority with respect to the by-laws of institutions.

d. Authority is provided to exempt designated approved corporations and approved institutions from specified provisions of the Act or regulations for a limited time period, to permit funding in special cases. This is identical to the proposed amendment to The Children's Mental Health Centres Act and we propose to use the authority in the manner described in the notes for that Act.

e. We are considering the expansion of the definition of "provincial supervisor" to permit us to utilize other existing resources in the field for the purposes of inspection under the Act.

1. RECOMMENDATION: The Minister should be granted the power to approve and revoke approval of programs for funding purposes. "Need" should be included as a factor in such decision-making. (Draft Act, s. 3,8)

2. RECOMMENDATION: Authority should be provided to exempt designated approved corporations or approved institutions from the application of certain provisions of the Act or regulations for a limited time period. (Draft Act, s. 9)

3. RECOMMENDATION: The power to establish the appropriate funding mechanism should be transferred to the regulations of the Act. (Draft Act, s. 5,6)

4. RECOMMENDATION: The Minister's authority to approve the by-laws of children's institutions should be clarified. (Draft Act, s.4)

5. RECOMMENDATION: The definition of provincial supervisor should be expanded to permit us to utilize other resources in the field for the purpose of inspection under the Act. (Draft Act, s.7)

7. The Provincial Courts Act
Affecting Observation and Detention Homes

1. Admission and Discharge

Detention of a juvenile awaiting court disposition is an issue of critical importance. Our primary concern, when considering this question, is that of admission to and discharge from a provincial observation and detention home. This is a process about which there is considerable public confusion. The Provincial Courts Act does not define how Ontario detention homes will be used. We believe that judicial control over admission to and discharge from an observation and detention home provides a fundamental protection for young people. Thus, we wish to specifically clarify such judicial control in the Act. We appreciate that, due to the emergency nature of many detention admissions, there is not always the time or the opportunity to have a judge's approval prior to admission of a child to the home. We envisage judicial approval of a detention admission taking place, preferably before admission, but if that is not practical, then as soon after admission as is reasonably possible.

1. RECOMMENDATION: Admission to and discharge from observation and detention homes should be directly controlled by judges of the Provincial Court. (Draft Act, s. 2)

2. Provision of Observation and Detention Services

Our work in the field of juvenile detention has emphasized the need for flexible programming in observation and detention homes to meet the special needs of young people in a period of crisis. We feel that a consistent and broad range of juvenile detention services should be offered throughout Ontario, available equally, where needed, to all juvenile residents of the Province. Under current legislation, this goal cannot be met.

The existing Provincial Courts Act clearly establishes observation and detention homes as part of a Provincial Court (Family Division) (s.21(1)). The superintendent and assistant superintendent of a detention home are, as officers of that particular family court (s.21(2)), required to act in accordance with the directions of the presiding family court judge (s.20). In practice, the absence of a central managerial authority has led to a fragmentation of juvenile detention service throughout Ontario and has inhibited the development of standard operating, programming and administrative procedures in detention homes. Such inconsistencies would be rationalized by amending the

legislation to make the operation and staffing of detention homes subject to the direction of the Minister. In providing for such a province-wide coordination of detention service, we hope to introduce much-needed program components into all of Ontario's detention homes, and also, accomplish such things as reduced costs through bulk purchasing and standardized, efficient management methods. We have appointed a full-time manager to coordinate observation and detention home functions on a province-wide basis. We are at present developing a common policy and procedure manual which we would like to see used in every detention home in the Province. Also, we are initiating staff training programs for detention home workers.

We also wish to specify conditions and standards to be maintained in observation and detention homes. We feel the appropriate statute to prescribe such standards is the proposed Children's Residential Services Act. Thus, we have recommended, in our proposed amendments to the Children's Boarding Homes Act, that the present exemption of observation and detention homes, from the requirements of that Act, be revoked. We are currently developing a broad range of standards to be implemented, through the new Children's Residential Services Act, in all children's residential care facilities in Ontario, including observation and detention homes.

In addition, we feel that the reference to the establishment of a detention and observation home in s. 17(1) of the Unified Family Courts Act should be deleted, to prevent an anomolous situation occurring with respect to the administration of the detention home in Hamilton.

2. RECOMMENDATION: The Minister should be permitted to establish, operate and maintain observation and detention homes separate from the family court. (Draft Act, s. 1)

3. RECOMMENDATION: The staff of a detention home should be subject to the control and direction of the Minister. (Draft Act, s. 3)

4. RECOMMENDATION: Observation and detention homes should be subject to the standards prescribed in the Children's Residential Services Act.

5. RECOMMENDATION: S.17(1) of The Unified Family Courts Act should be deleted. (Draft Act, s. 5)

3. Superintendent's Powers

We also feel that it is essential to the proper care of detained juveniles, to more clearly define the superintendent's powers with respect to the care and custody of those juveniles. Current legislation does not specify the superintendent's powers and responsibilities in relation to juveniles detained in the home. Many emergency situations arise in the day-to-day care of juveniles which could be more effectively resolved if the powers of those in charge of observation and detention homes were clarified.

6. RECOMMENDATION: The superintendent of an observation and detention home should have the "temporary care, custody and control" of juveniles admitted to the home, during the period of time in which the juvenile remains in the home. (Draft Act, s. 3)

7. RECOMMENDATION: The superintendent of an observation and detention home should have the power "to reapprehend, with or without warrant" a juvenile previously admitted to the home, in the event that juvenile is absent from the home, without the superintendent's consent, and prior to discharge. (Draft Act, s. 3)

4. Purchase of Service Agreements

The Ministry currently purchases observation and detention services in many communities in Ontario. There is no provision for this in The Provincial Courts Act, and such agreements are being effected under The Ministry of Community and Social Services Act. Such purchase of service represents a substantial cost-saving compared with the establishment of new direct government-run facilities. Purchase of service will also permit us to provide more flexible alternative forms of detention care, meeting individual community needs. Thus, we foresee that this will be the preferred method for providing observation and detention home services in the future. To facilitate this, we wish to include the specific powers in The Provincial Courts Act, for the Minister to enter into agreements for the purchase of service. We would also include the power to make regulations respecting the making of payments and the defining of certain terms used in the Act.

8. RECOMMENDATION: The Minister should be authorized to enter into agreements for the purchase of detention services, and to direct payment of expenditures necessary for such service. (Draft Act, s. 1)

9. RECOMMENDATION: The Lieutenant-Governor-in-Council should be authorized to make regulations respecting the making of payments under the Act and the defining of certain terms used in the Act. (Draft Act, s. 4)

8. The Training Schools Act

1. Introduction

Our review of the necessity for legislative amendments to The Training Schools Act indicated three areas of needed change. We believe strongly in the provision of a guaranteed right, specifically delineated by statute, to a judicial hearing for wards whose community placement has not been successful and who thus may face a return to training school. In accordance with the Ministry's intention to establish specific and effective standards for all children's residential care facilities, we wish to make training schools subject to the new Children's Residential Services Act. This change will enable us to implement standards within Juvenile Corrections programs. Finally, there are a number of issues and procedures which past experience has shown require clarification in the Act. For example, the role of the extensive group home program operated by Juvenile Corrections and the authority to apprehend runaway wards both need to be clarified.

2. Rehearing Prior to Return of Wards to Training School

At the present time when the community placement of a ward breaks down an administrative review is conducted to determine if the ward should be returned to training school. We feel that the decision to return a ward to training school is of such importance to the child that it should only be made after a formal and expeditious hearing at which the child has had a guaranteed right to be heard. We advocate the use of a judicial hearing, but it has been suggested that a quasi-judicial, administrative hearing would be more appropriate. We are exploring the relative merits of these two alternatives and hope to receive advice and guidance to help us determine which approach should be chosen.

We would prescribe an eight-day time limit, from the time of initiation of the proceedings, within which period the judge must make the decision to return or not to return the ward to training school. We would provide for the detention of a ward pending the hearing. A ward detained in an observation and detention home, without a judge's order, could only be detained for a period of up to 24 hours, or until the first possible time at which the ward could appear before a judge. It has been suggested that the law should permit detention of a ward in a local training school pending conclusion of a hearing. At the moment we feel this would not be appropriate. Wherever a child may be detained, the period of detention should

not be allowed to exceed eight days, within which time the judge's decision must be made.

We are concerned that the decision to place wards in the community might be affected by the knowledge that a rehearing is required prior to returning a ward to training school. The Training Schools Advisory Board is currently developing administrative guidelines for the release of wards into the community. We will also develop guidelines for determining the circumstances under which an application for a rehearing may be made. Such guidelines would include the commission of fresh offences by the ward and a few situations involving a clear risk to the child. We recognize that where a ward denies the commission of a fresh offence, the proposed eight-day time limit may not provide adequate time for a proper hearing for the child. Thus we feel that there may be situations where a charge will be laid after commission of a fresh offence, and a full trial held. The criteria which the judge would apply to determine whether or not the ward would be returned to training school would be very broad. We feel strongly that our proposed judicial hearing provides greater safeguards for the ward than does the present procedure for returning a ward to training school. We are, however, deeply concerned that we not introduce a lengthy and cumbersome mechanism which may become unworkable in practice.

We are concerned, because of a child's perception of the passage of time, that a judicial hearing must be held immediately and the issue of the child's return to training school resolved as quickly as possible. Thus we have decided to make that decision non-appealable. We also realize that the eight-day time limit within which a decision must be made may affect certain other wards' rights (e.g. effective legal representation). However, we are concerned that the ward not be detained longer than is absolutely necessary and that we not create potential for harm to the child which outweighs the benefits associated with a guaranteed hearing prior to a return to institutional care.

Finally, the provision for a hearing would apply to all training school wards, whether placed directly in a training school or in a group home immediately after disposition.

1. RECOMMENDATION: A judicial hearing should be required before a ward is transferred from a community placement to a training school.

Authority should be given to detain a ward in a place of safety pending a hearing. Time limits should be imposed on the length of time for detention pending a hearing and on the period within which a judge must make his or her decision. (Draft Act, s.9)

3. Standards

At present The Training Schools Act and its regulations prescribe very limited standards to be followed in Juvenile Corrections facilities. These standards refer briefly to record keeping, medical care and supervision of the wards. In order to guarantee certain protections to the children in our care, we feel it is necessary to specifically require compliance with standards relating to such other areas as physical plant, staffing and levels of care required by our wards. Thus we propose to include the Juvenile Corrections program within the scope of the new Children's Residential Services Act. The standards applicable to training schools and approved group homes would then be consistent with the range of standards we are currently developing for use in all children's residential care facilities throughout Ontario.

2. RECOMMENDATION: Residential care facilities operated by the Juvenile Corrections program should be subject to the standards set out in the Children's Residential Services Act. (Draft Act, s.11)

4. Transfer to Group Homes

A ward may be placed in the community either with his or her parents, a single family foster home or a group home. We wish to clarify the role of the group home program in the Act and provide a clear authority to place wards in group homes. The Training Schools Advisory Board would be involved in the decision to place a ward in a group home.

At the present time the Act provides for committal of a ward to training school and permits subsequent transfer to a home. We are exploring the possibility of providing for assessments of wards prior to committal to a training school. Such an assessment could recommend that a ward

not be placed in a training school, but rather in a group home. We thus propose to amend the Act to allow a ward to be placed either in a training school or directly in a home when the order of wardship is made.

3. RECOMMENDATION: The definition of "home" should be amended to include homes under contract with the Ministry. The Minister should be specifically authorized to purchase services for wards in group homes. (Draft Act, s.1)

5. Apprehension of Escaped Wards

If a child escapes or is A.W.O.L. from a training school he or she may be apprehended without warrant at any time before the 18th birthday and returned to the school. We would clarify and expand the existing authority to specify by whom the ward may be apprehended, provide that apprehension may be made with or without a warrant and provide for detention in a place of safety prior to return. We would also provide a time limit within which the child must be returned to training school consistent with the Criminal Code power to detain (within 24 hours or as soon thereafter as is possible).

4. RECOMMENDATION: The authority to apprehend and return a child to training school should be amended to provide for apprehension with or without a warrant and to specify by whom the ward may be apprehended. Provision should be made for detention in a place of safety prior to return and a maximum period of detention should be specified. (Draft Act, s.9)

6. Parents or Guardians

Only those who have a legal duty to provide for the child are entitled to receive notice of proceedings under the Act. We would expand that category to include other classes of persons whom the child regards as family, and who in fact care for him or her.

5. RECOMMENDATION: A definition of "guardian" should be added to the interpretation provisions, such

definition to encompass a person who has a settled intention to treat the child as a family member. (Draft Act, s.1)

7. Wardship of Children in Custody

When a child is committed to training school under the present legislation, the superintendent exercises the rights and duties of a guardian over the child. Since the child's wardship extends beyond the training school to community placement in a home, we feel that wardship should rest in the Area Administrator, whose jurisdiction is broader than that of the superintendent. We propose to amend the legislation to vest wardship in the Area Administrator and to provide for delegation of the powers and duties of the Area Administrator in relation to the ward. It would then be possible to delegate some of the day-to-day powers and duties to persons such as the training school superintendent. The Area Administrator would continue to have overall responsibility for the ward.

6. RECOMMENDATION: Wardship should be made the responsibility of the Area Administrator who would have the authority to delegate his or her powers and duties. (Draft Act, s.8(1))

8. Correspondence

The incarceration of a child in a training school is, by its very nature, an isolating experience for that child. We feel strongly that, because of this sense of isolation, training school wards should be encouraged to maintain contact with family and friends. The present regulation under The Training Schools Act, permitting the reading and censoring of a ward's mail, imposes an administrative barrier which may reinforce the child's feeling of isolation in the school. In practice, not all mail is read, but the mere fact that it can be, and is in some cases, creates doubts in a ward's mind about his or her privacy.

We propose to change the existing regulations under The Training Schools Act, to stipulate that ward's mail may not be read or censored. While we believe that a ward's privacy in communication should be respected and correspondence no longer read, we also recognize that, for valid

security reasons, the physical contents of a ward's correspondence should be inspected for contraband. Such inspection should be effected without reading or censoring the written communication and should also be done in the presence of the ward. Finally, we feel that s. 23(3) of the regulations under The Training Schools Act, specifically permitting letters to named positions, should be retained in the regulations for emphasis and clarity. The section should be expanded to include letters to and from the Ombudsman. We note, with support, that the Juvenile Corrections Division Training School Manual currently provides, in policy directive B-2, that correspondence covered by this section be "forwarded immediately without censoring". In addition, we believe wards should have the right to make a reasonable number of telephone calls to parents or guardians. Rules would have to be developed to ensure that the expense and number of calls are not unreasonable.

7. RECOMMENDATION: Correspondence to and from a ward should not be read, censored or withheld. Such correspondence may be opened, in the presence of the ward, and inspected for improper material, and any such improper material removed before forwarding the correspondence.

8. RECOMMENDATION: A ward should be permitted, at any time, to send or receive letters from his solicitor, the Minister, the Deputy Minister, members of the Ontario Legislature and of the Parliament of Canada, and the Ombudsman.

9. RECOMMENDATION: A ward should be guaranteed a right to reasonable communication with his or her parents or guardians.

9. Visits

In addition to providing legislative encouragement for a ward's written communication with family and friends, we also wish to support the present training school practice of encouraging family visits. At present, the regulations under The Training Schools Act do not specify the frequency of visits from a ward's family. We would provide for a reasonable number of visits from parents or guardians and would remove the superintendent's discretionary power regarding permission for these visits. The superintendent may define what constitutes a "reasonable" number of visits,

although the decision that a limited number or no visits at all is reasonable may be cause for a child to submit a grievance (discussed below, on page 99). Visits by siblings would continue to be subject to the superintendent's discretion. In addition, we would specifically provide for visits from a member of the clergy, the Ombudsman and a ward's solicitor.

10. RECOMMENDATION: A ward should be permitted to receive a reasonable number of visits from parents and guardians.

11. RECOMMENDATION: Upon a ward's request, or concurrence, the ward should be permitted visits from a member of the clergy, the ward's solicitor and the Ombudsman, such visits not to be subject to the superintendent's discretionary power.

10. Minor Changes

12. RECOMMENDATION: The authority to designate training schools should be clarified. (Draft Act, s.1)

13. RECOMMENDATION: Amendments should be made to the composition of The Training Schools Advisory Board. (Draft Act, s.2)

14. RECOMMENDATION: Certain changes should be made for the provision of transportation of wards.

9. Children's Rights

1. Introduction

There are certain fundamental principles which we feel must be guaranteed for the protection of all children in residential care facilities in Ontario. Our belief is that these principles already form part of the program of most, if not all, facilities in the Province. However, we feel that these principles should still be formally recognized. We propose implementing these guarantees in a variety of ways, according to the needs of each program: legislative amendment, regulation, guideline, and, policy manual directive. We solicit the views of others as to how, if at all, the rights or freedoms, outlined below, should apply differentially to various programs.

2. Communication

The removal of a child from home and family, and subsequent placement in a residential care facility, is a difficult experience for that child. In order to minimize the child's sense of isolation or even alienation, we recommend that, where not prohibited by court order, communication between a child and his or her family be actively encouraged. Thus we have proposed elsewhere that training school wards be entitled to receive a reasonable number of visits from parents, as an absolute right. While we feel that freedom of communication is a principle which should apply generally to all children's residential care facilities, we recognize that it may be necessary to define how this principle should apply in different residential situations. We also recognize that the principle may also apply differently to individual children where a judge may have granted or denied parental access through a court order, for example as part of a wardship order in a child protection case. Thus we will work with each program branch to determine the particular application of the principle to that program.

1. RECOMMENDATION: Where not prohibited by court order, a child placed in a residential care facility should be guaranteed a right of communication with his or her parents.

3. Religion

Freedom of religion is recognized as a fundamental human right in The Canadian Bill of Rights. We wish to reflect our belief in this basic freedom by specifically guaranteeing that children placed in Ontario's residential care facilities will continue to enjoy religious freedom while so placed. We would specifically permit a child to pursue his or her own religious beliefs, to the extent that is practicable within the residential setting.

We are considering the issue of whether or not a child placed in a residential care facility has the right to refuse to attend and/or participate in any religious service or instruction which may form part of that facility's program. This question also raises the broader issue of the child's right to refuse treatment, for the purpose of both religious instruction and treatment may be quite similar. The role of the parent or substitute parent in making such a decision for the child is also being examined. We have no proposal on these issues at present, but would appreciate receiving comment and opinion on them. These are important and conceptually difficult issues which we feel must be resolved in the future.

2. RECOMMENDATION: A child placed in a residential care facility should be permitted to follow the religious beliefs of his or her own choice, as long as the practice of those beliefs is practicable within the residential setting.

4. Medical Care

We believe that we owe the children placed in our residential care facilities the very best medical care. Thus we wish to expand upon existing provisions in both regulations and in manual directives relating to a child's right to medical treatment.

3. RECOMMENDATION: A child placed in a residential care facility should be assured of receiving any necessary and emergency medical treatment.

5. Access to Records

Each one of the services regulated and/or funded by the Division maintains extensive records on the children receiving those services. Information in such records is used to make important decisions about the future of a child. We feel it is critical that a child, or the child's representative have access to those files. Not only does such access accord with current beliefs regarding freedom of information, but it would also serve as a useful check on the validity of recorded information. Our proposal also agrees with the recommendations of the proposed federal Young Offenders Act which promote both the distribution of pre-disposition reports, and the availability of Youth Court records, to the young person, his or her parents and solicitor.

We recognize that knowledge of certain information could have a harmful effect upon a child and so are considering the value of several options which would limit a child's direct access to the records. These options may include: access to records only by a child's adult representative; requiring professional interpretation to the child of information in the records; and, requiring judicial or administrative approval of a child's access to records. However, we feel that the parent and the legal representative of the child should have an absolute right of access to records maintained on the child.

4. RECOMMENDATION: A child's residential care records should be made available, upon request, to the child's parent, the child's legal representative, and, in certain cases, to the child him or herself.

6. Dissociation

Dissociation may be defined as the isolation, for a limited period of time, of a child in a locked, or otherwise secured room, as a temporary control measure. Dissociation is currently used by training schools, detention homes, some mental retardation centres and certain other treatment programs. The decision to put a child in dissociation is a serious one, which could have traumatic consequences for the child. Thus we strongly support the policy recommended by the Juvenile Correction's Committee on The Use of Dissociation in Training Schools in its report issued July 15, 1977. The Committee recommended that "...dissociation be regarded as an extreme form of control, to be

used only in the exceptional case where all other reasonable options have been considered and/or tried". We will be developing a detailed set of guidelines to regulate dissociation. We will draw upon the experience of the service providers working in those programs which use dissociation, to develop the guidelines. We know that the guidelines will address at least the following points: a) the recording of all dissociation placements in a log book; b) the requirement of an informal hearing as soon as possible after the decision to place in dissociation; c) the imposition of a time limit on dissociation placements; and, d) the necessity that certain physical standards be met in the dissociation room. We will also be considering the question of which programs or facilities may use dissociation.

5. RECOMMENDATION: Dissociation should be used only in exceptional cases, where all other reasonable options have been considered and/or tried and should be used only according to Ministry guidelines.

7. Use of Force

Corporal punishment is not permitted in Ontario's direct-run residential care facilities. We wish to reflect, and strongly support, this attitude, by recommending that corporal punishment not be permitted in facilities licensed by the Ministry.

The problematic circumstances of many of the children committed to the care of our residential care facilities increases the possibility of violence both between the children themselves, and also between children and staff. We recognize the right of a staff member to protect himself or herself when faced with a physical attack. We also feel that it is necessary and appropriate that children be restrained when causing injury to themselves or others. However, we feel that proper staff selection and training can limit the need for physical restraint of children. When such restraint is necessary, we feel the force used should be reasonable and as minimal as possible in the circumstances.

6. RECOMMENDATION: The use of corporal punishment should not be permitted in residential care facilities.

7. RECOMMENDATION: Only such minimal force as is reasonable in the circumstances should be used in residential care facilities when it is necessary to restrain children who may be causing injury to themselves or others.

When one discusses the issues of dissociation and corporal punishment, this raises the question of whether certain forms of treatment (e.g. the more excessive forms of negative reinforcement or aversive therapy) do in fact cross the line between appropriate and permissable therapy and inappropriate force or punishment. We are very supportive of the work now being done in this area by a sub-committee of the Ontario Association of Children's Mental Health Centres. It is our intention to work towards the development of guidelines, standards, etc. in this area, recognizing that the broader rights articulated in this package only represent a conceptual framework or a point of departure.

8. Grievance Procedure

The preceding guarantee for children, which we wish to specify in both legislation and Ministry Guidelines, will be meaningless without also providing a grievance procedure for those children. Children confined to residential care facilities must feel confident that, should they have a complaint, they will be heard in a known and structured way. We are currently working on Division Guidelines for a grievance procedure to be used in all Children's Services Divisions' residential care facilities. We feel strongly that there should also be a formal mechanism for informing the children in care of the protections to which they are entitled. Such a mechanism will form part of our proposed grievance procedure.

8. RECOMMENDATION: A grievance procedure, following Ministry Guidelines, should be made known and available to every child placed in a residential care facility in Ontario. Such a procedure would embody the child's right to know what his or her rights are while in residential care.

10. Summary of Recommendations

The Child Welfare Act

1. The definition of a "municipality" should be amended to more clearly recognize a "regional government" and to refer to all municipalities as corporate bodies. (Draft Act, s. 1)

2. Where a children's aid society does not submit its budget estimates before the deadline established by the Director of Child Welfare, the Minister should be able to establish an amount and treat that amount as the estimate submitted to the Minister. The society should retain the right to call for a child welfare review board. (Draft Act, s. 2)

3. Where a municipality has not approved a society budget estimate within the 60 days allowed by the Act, that estimate should be deemed an approved estimate for the continuing budget process. The municipality should retain the right to call for a child welfare review board, but it must choose to do so before the 60 days have expired. (Draft Act, s. 2)

4. Non-ward care should be renamed "care by agreement" and should be limited to an initial agreement of up to six months. The agreement should be reviewed by the Director of Child Welfare and extended for a further period if temporary care is still required that together with the initial period, would not exceed 12 months. (Draft Act, s. 9(1))

5. Any uninterrupted period during which a child is subject to care by agreement should be subtracted from the total period that the child can be kept in care under society wardship. (Draft Act, s. 16)

6. The consent of a child aged 12 or over should be required as part of an agreement for his or her temporary care. The child should also have the right to terminate "care by agreement" after giving 15 days' notice to the society. (Draft Act, s. 9(1)(2))

7. "Care by agreement" and "special needs agreements" should be available, upon the approval of the Director of Child Welfare, to persons aged 16 and 17. (Draft Act, s. 9(1))

8. A "special needs agreement" should be provided for separately in the Act. All such agreements should be subject to the prior consent of the Director of Child Welfare, but no statutory time limit should be imposed. (Draft Act, s. 9(1))

9. The definition of a "place of safety" should be limited to receiving homes, foster homes, hospitals and other places designated by the Director of Child Welfare. Training schools should be specifically excluded as "places of safety". (Draft Act, s. 5(2))

10. In ordering an adjournment the court should consider open, child care oriented resources as the most appropriate placement if the child is unable to live at home. In no case should a training school or an unapproved observation and detention home be available for such a placement. No adjournment should exceed 30 days. During such adjournment there should be a presumption that the apprehended child remain in the custody of the society unless the court orders otherwise. The presumption is revised if the child is before the court on an order to produce. (Draft Act, s. 10(9))

11. In protection hearings and adoption consents, a wider category of putative fathers should be entitled to notice of a hearing or the right to give a consent to adoption. (Draft Act, s. 5(2), 25(1))

12. Foster parents who have had continuous custody of a child for six months immediately preceding a protection hearing should be enitiled to notice of that hearing and an opportunity to be heard. Group homes and other private child care organizations should be regarded as "foster parents" if the organization meets these time requirements. (Draft Act, s. 10(4))

13. The form of notice to parents in protection hearings should be simplified and amended to include a notice of the alleged grounds for protection and of the disposition sought. The Regulations should be amended to allow a society to apply before or during the hearing for permission to rely on grounds in addition to those mentioned in the original notice. (Appended proposed form, pp. 54 ff.)

14. A provincial court judge sitting elsewhere in a court outside the area in which the child was apprehended should be able to hear a case. (Draft Act, s. 5(3) 12(2))

15. A warrant for the return of a child who has left the care of a society may be issued if the child has departed from the protective custody of the society without the society's consent. (Draft Act, s. 6)

16. The judge should have to record the location of protection only where the child was taken to a place of safety before the hearing. (Draft Act, s.10(1))

17. The notice of hearing to the regional welfare administrator should no longer be required under The Child Welfare Act. (Draft Act, s. 10(6))

18. In the homemaker provisions of the Act it should be possible to dispense with the required notice to the parents where such notice is impractical or impossible. The homemaker sections should also be changed to reflect the expanded "best interests" test in the Act. (Draft Act, s.8, 10(7))

19. Before finding that a child is "in need of protection", a court should have to consider what work has been done (or is possible) by the children's aid society in the child's home. (Draft Act, s.10(2))

20. The "best interests" test should apply when a judge is choosing an order at the disposition stage of a protection hearing. (Draft Act, s.12(1))

21. If a statutory test of "best interests", "the least detrimental alternative" or a combination of the two is attached to the disposition stage of a protection hearing, that test should be followed by a list of factors which must be considered by the judge. (Draft Act, s.5(1))

22. The uniform "best interests" test should be applied for further orders of the court and to any decisions to terminate an order under the Act. (Draft Act, s. 12(1), 14, 16(1)(2), 17(1))

23. When a disposition of society wardship or Crown wardship is made by a judge, he or she should be required by the Act to record: (i) the reasons why the child cannot be adequately cared for in his or her own home, (ii) the proposed plan submitted by the children's aid society for the period that the child is in care, and (iii) any other reasons for finding that the child should be removed from his or her home. (Draft Act, s. 15)

24. When a supervision order is chosen as the disposition in a protection hearing, the judge should be able to attach terms and conditions, applying to the parents and/or the children's aid society, to that order. (Draft Act, s. 11(2))

25. In a protection hearing, the court should have the power to order a diagnostic assessment of a child, his or her parents or other persons having custody of a child. The assessment should be carried out at the disposition stage of a hearing by qualified professionals now available to the courts. The parents and the child's legal representative should have the right to see the assessment in advance and to cross-examine the person who prepared it. (Draft Act, s. 10(9))

26. Evidence of a past occurrence of child abuse in a family, whether or not it was submitted in an earlier hearing, should be admissible in a protection hearing in order to help prove a pattern of abuse or neglect in a family situation. The judge should be able to require proof of the general validity of the past evidence. (Draft Act, s. 10(4))

27. A judge should have the power to summon witnesses to attend and give evidence at a protection hearing. This should be possible without the consent of the parties in the hearing. (Draft Act, s. 10(3))

28. In deciding whether to allow the child to be present in court during a protection hearing, the court should consider two presumptions: (i) children aged ten and over should be present unless good reasons can be shown to exclude them; and (ii) children under ten should not be present unless good reasons can be shown for their attendance. (Draft Act, s.13)

29. It should be possible to apply for access or for an order varying access at any time during or after a hearing on other child protection issues, and such application should be available to the ward who is 12 years of age or over. (Draft Act, s. 14)

30. The general public should continue to be excluded from protection hearings; but a judge should have the discretion to admit any member of the public who applies for access to the courtroom. (Draft Act, s. 20)

31. A limited number of media representatives should have the right of access to protection hearings. All reports of the media would be subject to a ban on the publication of information that could identify persons who were before the court. The same prohibition should apply to other members of the public allowed to attend the hearing. (Draft Act, s. 20)

32. A judge in a child protection hearing should have the discretion to appoint, at any time before or during the proceedings, a separate legal representative for the child. (Draft Act, s. 5(3))

33. The various termination and review sections of the Act should be made internally consistent by allowing: (i) for a review of the child's status in the case of access orders, supervisory orders, society wardship and Crown wardship orders; (ii) a children's aid society to seek review at any time; (iii) parents or the child 12 years of age or over to seek review after an order has been in effect for six months and thereafter at only six-month intervals; (iv) a judge to substitute any appropriate order under the Act for the original order, except that society wardship should not be possible when Crown wardship is reviewed. (Draft Act, s. 17(1))

34. Crown wardship cases should go back to court every two years for an automatic review of the placement history and future for the child. Upon completing the review, the judge should be able to order one of the following: (i) continue the Crown wardship, (ii) terminate the Crown wardship and return the child to the biological parents, or (iii) terminate the Crown wardship and return the child to the biological parents under the supervision of a children's aid society; and (iv) grant, vary, or terminate an access order. (Draft Act, s. 17(5))

35. In order to reduce a sudden burden on the courts, automatic review of Crown wardship should only apply to Crown wardship orders made in the past 22 months as well as to future orders. (Draft Act, s. 17(6))

36. A society, or a Crown ward aged 12 or over should have the right to apply six months after the order has been made and thereafter at six-month intervals to the court for a review of his or her status in care. (Draft Act, s. 16(2), 17(1)(2))

37. The right to notice of review of status hearings should be expanded to include, in all appropriate cases, the Director of Child Welfare, the children's aid society, the parents of the child, a child aged 12 and over, and foster parents who have had a continuous parent-child relationship of six months' duration. (Draft Act, s. 17(1)(5))

38. The Director of Child Welfare should be authorized to appeal a protection order. (Draft Act, s. 18(1))

39. Appeals from orders under Part II of the Act should be heard within 30 days after the transcript of the oral evidence has been prepared. The court reporter who prepares the transcript will be required to file with the court a certificate indicating the date on which the transcript was completed. The time within which the appeal is to be heard will run from that date. (Draft Act, s. 18(4))

40. Once a notice of appeal is filed, the order being appealed is automatically stayed for five days. At any time after the order is stayed and before the appeal is disposed of, the appeal court judge should have the power to make an order for the temporary care and custody of the child. (Draft Act, s. 18(3))

41. The period of time of temporary care and custody pending an appeal should be included in determining the maximum limit of society wardship granted or confirmed on appeal. (Draft Act, s. 18(3)(5))

42. Those having grounds in the course of professional or official duties to suspect child abuse should be required to report the information to a children's

aid society. There should be a penalty for failure to report, but protection from civil liability should continue as an encouragement for reporting child abuse whether or not there is a requirement to report. (Draft Act, s. 19)

43. A definition of "abuse" should be added to the Act to include serious physical harm or sexual molestation affecting a child which may have been caused or permitted by a person who has or had charge of the child. (Draft Act, s. 19)

44. The penalties for desertion or failure to protect a child should be increased to reinforce the seriousness of the offence. The existing age limit under which a child is not to be left unattended should be removed in order to ensure that a child receives supervision and care consistent with his or her needs and the penalties should be increased. (Draft Act, s. 19)

45. If a society has been refused access to records or documents which would assist the society in making an investigation to determine whether a child is in need of protection, it may apply for a court order authorizing access to the premises containing the records and to the records. A penalty should be imposed for failure to permit access, furnishing false information or refusal or neglect to furnish information. (Draft Act, s. 6)

46. Where an adoption placement of a Crown ward has been made or is about to be made and a notice of intent to adopt has been filed with the society (i) the bioligical parents should be notified of the fact of the proposed adoption, and (ii) the biological parents should have 30 days, from the day that they receive notice from the society of the intention to adopt, to seek one final review of their child's status in care. (iii) If the biological parents do not seek review within 30 days, their parental rights, except for inheritance purposes, should be fully terminated. The court should have the power to dispense with the notice to the biological parents in appropriate cases. (Draft Act, s. 17(5))

47. If a biological parent applies for one final review of the child's status at the time of adoption placement or proposed placement and an access order is made or continued at that review, the adoption would not be possible. (Draft Act, s. 29)

48. The time for making an appeal under Part II of the Act should be strictly limited to 30 days when (i) the 30 days have expired and notice of intent to adopt has been filed with the Director of Child Welfare, and (ii) a final review of the child's status has been sought and the resulting order is being appealed by any party in the review. (Draft Act, s. 18(2)

49. Where an adoption placement is proposed or is made after taking adoption consents from the biological parents, and when notice of intention to adopt has been received from the adoptive parents, the biological parents should be entitled to notice of this fact. After receiving that notice, the parents should have 30 days to ask a court for withdrawal of the consent. After 30 days, the parents' rights, except for inheritance purposes, should be fully terminated. (Draft Act, s. 25(5))

50. At the time of a proposed adoption, it should be possible for guardianship to be transferred to a licensed adoption agency. (Draft Act, s. 25(5))

51. Jurisdiction over adoption proceedings should be transferred from the County Court or Supreme Court to the Provincial Court (Family Division). (Draft Act, s. 22 & 23)

52. All placements for adoption with the exception of step-parents and close relative adoptions (i.e. those by grandparents and uncles and aunts), should be effected through a licensed adoption agency. The Children's Services Review Board should be given authority to review matters relating to licensing of adoption agencies. (Draft Act, s. 30)

53. Adoptions by relatives or step-parents should be exempted from a mandatory study of conditions in the child's home unless that study is ordered by the court. (Draft Act, s. 87) All other adoption placements will require prior approval by the

Director. The Director will have authority to require a home study prior to approving a placement. (Draft Act, s. 30)

54. Where a children's aid society is alleged to have acted improperly in any particular case involving approval of an adoptive home, placement of a child or removal of a child from prospective adoptive parents, the Director of Child Welfare should have the discretion to conduct a review of the refusal or removal. The Director should have the power to confirm the society's decision or to direct the society to exercise its powers under the Act in a particular fashion to remedy the issue. (Draft Act, s. 27)

55. When the court grants or refuses an adoption order, there should be an appeal available to the applicants, the Director or Child Welfare or the children's aid society. An order granting or refusing the withdrawal of a consent to adoption of a biological parent of the child should be available to those giving the consent, the Director of Child Welfare and the children's aid society. The appeal should have to be filed with the Court of Appeal within 30 days of the order or the refusal of an order. After the expiration of the appeal period, the order of the court should be irrevocable. (Draft Act, s. 28)

56. The existing regulation of subsidized adoption should be made part of The Child Welfare Act. The funds available for financial subsidies should be authorized at the discretion of the Minister. (Draft Act, s.32)

57. Consents to adoption given by minor parents should be valid only where such consents are approved by the Official Guardian. The requirement of representation by the Official Guardian or some other person as guardian ad litem for a minor parent in adoption hearings should be deleted. (Draft Act, 23 (3) 25(4))

58. Fees and expenses of licensed adoption agencies, legal fees and medical expenses should be excluded from prohibition against giving or receiving considerations for the adoption of children and penalties for violation of the prohibition should be increased. (Draft Act, s. 31)

59. The Ministry should have the legal authority to establish and regulate fees charged by children's aid societies for their adoption services. (Draft Act, s. 30)

The Day Nurseries Act

1. The definition of "day nursery" should be amended by deleting the exemption, from licenisng under the Act, of day nurseries which are part of private schools and of children's mental health centres. (Draft Act, s. 1(2))

2. Private-home day care agencies should be licensed and authority should be given to regulate and inspect private-home day care agencies. (Draft Act, s. 9)

3. Authority should be given to make regulations prescribing classes of day nurseries and to set standards applicable to each class. (Draft Act, s. 11(1)(a))

4. The maximum age of non-developmentally handicapped children served by both day nursery and private-home day care programs should be raised from 10 to 12 years. (Draft Act, s. 1(2)(e))

5. The definition of "private-home day care" should be amended to include service to developmentally handicapped children up to the age of 18 years. (Draft Act, s. 1(2)(e))

6. Authority should be given to purchase in-home services for handicapped children, and authority should be given to make regulations defining in-home services, terms and conditions under which such services may be provided, and classes of persons eligible for such services. (Draft Act, s. 3(4) 13))

7. All administrative hearings required by The Day Nurseries Act should be heard by the Children's Services Review Board. (Draft Act, s.10)

8. The definition of "day nursery" should be amended to include either temporary care and custody or guidance, or both, for those children enrolled in the program. (Draft Act, s.1 (2))

9. The term "operator" should be defined as meaning an individual or corporation. (Draft Act, s.1(2))

10. Authority should be given for the Director of Day Nurseries to apply to a judge for an injunction enjoining any person operating a day nursery or a licensed private-home day care agency from contravening any provision of this Act or its regulations. (Draft Act, s. 15)

11. Revocation of approval of a corporation should be permitted without the corporation's consent, where notice has been properly served and the corporation has been given an opportunity to request a hearing but has not done so within a prescribed time limit of 15 days. (Draft Act, s.5)

12. The definition of "provincial supervisor" should be expanded to permit us to utilize other existing resources in the field for the purposes of inspection under the Act. (Draft Act, s.10)

13. Information relating to the financial circumstances of parents and to the medical condition of children should be confidential.

14. The determination of level of subsidy should be made by regulation. The Minister's prior approval should be required for expenditures for the operation of day nurseries and the purchase of private-home day care and day nursery services. (Draft Act, s. 6)

15. The name of the Act should be changed to The Children's Day Care Act and any reference to "day nursery" should be changed to "day care centre". (Draft Act, s.16)

The Children's Boarding Homes Act

1. The current authority to register a facility under The Children's Boarding Homes Act should be changed to an authority to license such facilities and their operators. (Draft Act, s. 6)

2. The regulations - enabling section of the Act should be amended to provide a broad power to set standards for residential care facilities. (Draft Act, s. 13)

3. The name of The Children's Boarding Homes Act should be changed to The Children's Residential Services Act, and the term "children's boarding home" should be replaced by the term "children's residence". (Draft Act, s. 15)

4. The term "operator" should be substituted for the term "occupier", which is currently used in the Act. "Operator" should be defined as "a person or corporation which has control and/or management of a children's residence". (Draft Act, s. 1)

5. The definition of "children's boarding home" ("children's residence") should be amended to require licensing for certain presently exempted facilities. (Draft Act, s.1)

6. The regulations enabling section of the Act should be amended to permit exemption of certain programs or facilities from licensing requirements until the new standards are developed. (Draft Act, s. 13)

7. The definition of "children's boarding home" ("children's residence") should be amended to require licensing of facilities and of operators providing care for three or more children. (Draft Act, s.1)

8. The definition of "children's boarding home" ("children's residence") should be amended to clarify that facilities providing residential, sheltered or specialized group care are subject to the provisions of this Act. (Draft Act, s.1)

9. A Children's Services Review Board should be created. (Draft Act, s.4)

10. The existing sections of the Act, dealing with inspections, should be expanded. (Draft Act, s. 12)

11. The authority should be provided to permit the Ministry to obtain an injunction of breach of the Act, or any continuing breach after a conviction under the Act. (Draft Act, s.14)

12. The definition of "provincial supervisor" should be expanded to permit us to utilize other existing resources in the field for the purpose of inspection under the Act. (Draft Act, s. 12)

The Children's Mental Health Centres Act

1. The Minister should be given the power to approve for funding purposes non-profit corporations as children's mental health centres and to revoke such approvals. The licensing provisions should be revoked. (Draft Act, s.s. 1 & 3)

2. Approval for funding and the revocation of such approval should be permissable on the basis of need or lack of need for the service. (Draft Act, s.3)

3. Authority should be provided to exempt designated approved corporations or approved centres from the application of certain provisions of the Act or regulations for a limited time period. (Draft Act, s. 7)

4. All by-laws and amendments to by-laws should be subject to Ministerial approval. (Draft Act, s. 6)

5. The funding mechanism for such programs should be transferred to the regulations, to enable development of a standard funding approach for children's services.

6. For funding purposes, there should be a power to approve retroactively. (Draft Act, s. 3)

The Children's Institutions Act

1. The Minister should be granted the power to approve and revoke approval of programs for funding purposes. "Need" should be included as a factor in such decision-making. (Draft Act, s. 3,8)

2. Authority should be provided to exempt designated approved corporations or approved institutions from the application of certain provisions of the Act or regulations for a limited time period. (Draft Act, s. 9)

3. The power to establish the appropriate funding mechanism should be transferred to the regulations of the Act. (Draft Act, s. 5,6)

4. The Minister's authority to approve the by-laws of children's institutions should be clarified. (Draft Act, s. 4)

5. The definition of provincial supervisor should be expanded to permit us to utilize other resources in the field for the purpose of inspection under the Act. (Draft Act, s. 7)

The Provincial Courts Act

1. Admission to and discharge from observation and detention homes should be directly controlled by judges of the Provincial Court. (Draft Act, s. 2)

2. The Minister should be permitted to establish, operate and maintain observation and detention homes separate from the family court. (Draft Act, s. 1)

3. The staff of a detention home should be subject to the control and direction of the Minister. (Draft Act, s. 3)

4. Observation and detention homes should be subject to the standards prescribed in The Children's Residential Services Act.

5. S.17(1) of The Unified Family Courts Act should be deleted. (Draft Act, s. 5)

6. The superintendent of an observation and detention home should have the "temporary care, custody and control" of juveniles admitted to the home, during the period of time in which the juvenile remains in the home. (Draft Act, s. 3)

7. The superintendent of an observation and detention home should have the power "to reapprehend, with or without warrant" a juvenile previously admitted to the home, without the superintendent's consent, and prior to discharge. (Draft Act, s. 3)

8. The Minister should be authorized to enter into agreements for the purchase of detention services, and to direct payment of expenditures necessary for such service. (Draft Act, s. 1)

9. The Lieutenant-Governor-in-Council should be authorized to make regulations respecting the making of payments under the Act and the defining of certain terms used in the Act. (Draft Act, s. 4)

The Training Schools Act

1. A judicial hearing should be required before a ward is transferred from a community placement to a training school. Authority should be given to detain a ward in a place of safety pending a hearing. Time limits should be imposed on the length of time for detention pending a hearing and on the period within which a judge must make his or her decision. (Draft Act, s. 9)

2. Residential care facilities operated by the Juvenile Corrections program should be subject to the standards set out in The Children's Residential Services Act. (Draft Act, s. 11)

3. The definition of "home" should be amended to include homes under contract with the Ministry. The Minister should be specifically authorized to purchase services for wards in group homes. (Draft Act, s. 1)

4. The authority to apprehend and return a child to training school should be amended to provide for apprehension with or without a warrant and to specify by whom the ward may be apprehended. Provision should be made for detention in a place of safety prior to return and a maximum period of detention should be specified. (Draft Act, s. 9)

5. A definition of "guardian" should be added to the interpretation provisions, such definition to encompass a person who has a settled intention to treat the child as a family member. (Draft Act, s. 1)

6. Wardship should be made the responsibility of the Area Administrator who would have the authority to delegate his or her powers and duties. (Draft Act, s. 8(1))

7. Correspondence to and from a ward should not be read, censored or withheld. Such correspondence may be opened, in the presence of the ward, and inspected for improper material, and any such improper material removed before forwarding the correspondence.

8. A ward should be permitted, at any time, to send or receive letters from his solicitor, the Minister, the Deputy Minister, members of the Ontario Legislature and of the Parliament of Canada and the Ombudsman.

9. A ward should be guaranteed a right to reasonable communication with his or her parents or guardians.

10. A ward should be permitted to receive a reasonable number of visits from parents and guardians.

11. Upon a ward's request, or concurrence, the ward should be permitted visits from a member of the clergy, the ward's solicitor and the Ombudsman, such visits not to be subject to the superintendent's discretionary power.

12. The authority to designate training schools should be clarified. (Draft Act, s. 1)

13. Amendments should be made to the composition of The Training Schools Advisory Board. (Draft Act, s. 2)

14. Certain changes should be made for the provision of transportation of wards.

Children's Rights

1. Where not prohibited by court order, a child placed in a residential care facility should be guaranteed a right of communication with his or her parents.

2. A child placed in a residential care facility should be permitted to follow the religious beliefs of his or her own choice, as long as the practice of those beliefs is practicable within the residential setting.

3. A child placed in a residential care facility should be assured of receiving any necessary and emergency medical treatment.

4. A child's residential care records should be made available, upon request, to the child's parent, the child's legal representative, and, in certain cases, to the child him or herself.

5. Dissociation should be used only in exceptional cases, where all other reasonable options have

been considered and/or tried and should be used only according to Ministry guidelines.

6. The use of corporal punishment should not be permitted in residential care facilities.

7. Only such minimal force as is reasonable in the circumstances should be used in residential care facilities when it is necessary to restrain children who may be causing injury to themselves or others.

8. A grievance procedure, following Ministry guidelines, should be made known and available to every child placed in a residential care facility in Ontario. Such a procedure would embody the child's right to know what his or her rights are while in residential care.

11. List of Guidelines

As a result of suggested recommendations in the Legislative Package and the Ministry's Response to recommendations from a recent Coroner's Jury Report, we feel it would be helpful to formulate various guidelines and directives which would clarify how such recommendations might be implemented.

The following list outlines the guidelines which we are in the process of developing.

The Child Welfare Act

1. Guidelines for extension of services to persons aged 16 and 17
(Draft Act, s.9(1))

2. Guidelines for special needs agreements to assist children's aid societies in determining time periods, review mechanisms and nature of the special needs that will qualify for these agreements
(Draft Act, s.9(1))

3. Guidelines to the societies outlining precisely the persons who should be notified in protection hearings and adoption consents. (e.g. the putative father)
(Draft Act, s.5(1), s.5(2))

4. Guidelines for the "best interests" test
(Draft Act, s.5(i))

5. Guidelines for licensing adoption agencies
(Draft Act, s.30)

6. Guidelines for subsidized adoption
(Draft Act, s.29)

Guidelines and Directives in Response to the Coroner's Jury Report

7. Directive to children's aid societies on how to introduce into court hearings evidence of prior court cases

or of previous parental failures involving the same child or members of his family, suggesting those cases where societies will require legal representation and offering to assist them in acquiring such representation if necessary
(Recommendations 2.3 and 2.5, Coroner's Jury Report)

8. Directive to children's aid societies outlining procedures to be followed on "identification hearings"
(Recommendation 2.4, Coroner's Jury Report)

9. A statement clarifying the authority of the judge to attach conditions to orders of supervision under Section 26 of The Child Welfare Act. A directive will also be sent to the children's aid societies about how to monitor such conditions, including the sending of an explanatory letter to the family after the order is made
(Recommendation 2.8, Coroner's Jury Report)

10. Guidelines to ensure discussion by children's aid societies and judges on the type of "preventive wardship"
(Recommendation 3.3, Coroner's Jury Report)

The Training Schools Act

1. Guidelines for delegation of guardianship authority of Area Administrator
(Draft Act, s. 8(1))

2. Guidelines for release of wards into the community, to be prepared with the assistance of the Training Schools Advisory Board
(Draft Act, s.9)

3. Guidelines for determining the circumstances under which an application can be made to a court seeking an order returning a ward to the training school
(Draft Act, s.9)

Guidelines and Directives Applicable to All Programs In Response to the Coroner's Jury Report

1. A directive to children's aid societies and other agencies involved with children clarifying and

explaining their rights to obtain and give complete documentation and information (Recommendation 6.5 and 6.6, Coroner's Jury Report). We have also formed a committee to develop general guidelines on release of information.

2. Development of guidelines by a task force of judges and clinicians regarding the role of family court clinics and their relationship to the courts (Recommendation 10.2, Coroner's Jury Report)

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Future consultation papers will concern local children's services committees and automated information systems.

You will be notified of their release in special editions of the Children's Services Newsletter.